

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. No. 03-24-90004

IN RE: COMPLAINT OF JUDICIAL MISCONDUCT
OR DISABILITY

ORIGINAL PROCEEDINGS UNDER 28 U.S.C. § 351

MEMORANDUM OPINION

(Filed: March 13, 2024)

PRESENT: CHAGARES, Chief Judge.

This complaint is filed under the Judicial Conduct and Disability Act, 28 U.S.C. §§ 351-64, against a United States District Judge (Subject Judge). For the reasons discussed below, the complaint will be dismissed.

The Judicial Conduct and Disability Act provides a remedy if a federal judge “has engaged in conduct prejudicial to the effective and expeditious administration of the business of the courts.” 28 U.S.C. § 351(a). A chief judge may dismiss a complaint if, after review, he or she finds it is not cognizable under the statute, is directly related to the merits of a decision or procedural ruling, or is frivolous or lacks sufficient evidence to raise an inference of misconduct. 28 U.S.C. § 352(b)(1)(A)(i)-(iii).¹

¹ Complainant previously filed a judicial misconduct complaint against another District Judge regarding a different underlying civil suit. That complaint was dismissed as frivolous and merits-related. See J.C. No. 03-19-90007.

Complainant, a state inmate, filed a civil rights action under 42 U.S.C. § 1983 in January 2023. The matter was transferred from another federal district court to the Subject Judge's district and assigned to him. While the matter was pending before the Subject Judge, Complainant filed two motions for appointment of counsel. The Subject Judge denied both motions without prejudice to Complainant's filing another such motion later. The matter was reassigned to another judge in November 2023 and remains pending.

In his judicial misconduct complaint, Complainant argues that the Subject Judge failed to rule on motions that were pending for more than three months, allowed the defendants to avoid providing discovery, denied Complainant's motions to appoint counsel despite his serious mental health issues, and declined to hold a hearing to determine whether appointment of counsel was warranted. He also contends that the Subject Judge treated the case differently because Complainant is a prisoner and has mental illness.

Complainant's allegations primarily challenge the rulings of the Subject Judge and, as merits-related claims, are not cognizable in judicial misconduct proceedings. See Rule 4(b)(1), Rules for Judicial-Conduct and Judicial-Disability Proceedings ("Cognizable misconduct does not include an allegation that calls into question the correctness of a judge's ruling, including a failure to recuse."). In addition, these proceedings do not serve as a substitute for appeal or as a means for Complainant to obtain collateral review of rulings from his ongoing case. See In re Memorandum of Decision of Judicial Conference

Committee on Judicial Conduct and Disability, 517 F.3d 558, 561 (U.S. Jud. Conf. 2008).

Because Complainant's claims are not cognizable under the Judicial Conduct and Disability Act, they are subject to dismissal. See 28 U.S.C. § 352(b)(1)(A)(ii); Rules 4(b)(1), 11(c)(1)(B), Rules for Judicial-Conduct and Judicial-Disability Proceedings.

Complainant's claims of delay and failure to produce discovery will likewise be dismissed as merits-related and frivolous. See 28 U.S.C. § 352(b)(1)(A)(ii) and (iii). Cognizable misconduct "does not include an allegation about delay in rendering a decision or ruling, unless the allegation concerns an improper motive in delaying a particular decision or habitual delay in a significant number of unrelated cases." Rule 4(b)(2), Rules for Judicial-Misconduct and Judicial-Disability Proceedings; see also Commentary to Rule 4(b)(2) ("a complaint of delay in a single case is excluded as merits-related. Such an allegation may be said to challenge the correctness of an official action of the judge . . . assigning a low priority to deciding the particular case."). Complainant does not identify which motions he is referring to, but, generally speaking, a three-month time period for a motion to be pending does not constitute an undue delay. There is no evidence of improper motive, and Complainant does not allege a "habitual delay." Id. As for his contention that his discovery requests have gone unanswered, according to a court filing by the defendants in the case, they responded to Complainant's discovery requests on December 1, 2023, and January 16, 2024. Thus, the allegations of delay and failure to provide discovery will be dismissed as non-cognizable and frivolous. 28 U.S.C. § 352(b)(1)(A)(ii) and (iii).

To the extent that Complainant argues that the Subject Judge has treated his case differently because Complainant is a prisoner and/or suffers from mental illness, these allegations will be dismissed as frivolous and unsupported by evidence that would raise an inference that misconduct has occurred. See 28 U.S.C. § 352(b)(1)(A)(iii); Rule 11(c)(1)(C), (D), Rules for Judicial-Conduct and Judicial-Disability Proceedings. Complainant's bare allegations are insufficient to raise an inference of misconduct, and he has not provided any evidence to support his claims. The record has been thoroughly reviewed, and there is no indication that the Subject Judge acted with prejudice or bias of any kind.

Based on the foregoing, this complaint will be dismissed pursuant to 28 U.S.C. § 352(b)(1)(A)(ii) and (iii).

s/ Michael A. Chagares
Chief Judge

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. No. 03-24-90004

IN RE: COMPLAINT OF JUDICIAL MISCONDUCT
OR DISABILITY

ORIGINAL PROCEEDINGS UNDER 28 U.S.C. § 351

ORDER

(Filed: March 13, 2024)

PRESENT: CHAGARES, Chief Judge.

On the basis of the foregoing opinion entered on this date, it is ORDERED AND ADJUDGED that the written complaint brought pursuant to 28 U.S.C. § 351 is hereby dismissed under 28 U.S.C. § 352(b)(1)(A)(ii) and (iii).

This order constitutes a final order under 28 U.S.C. § 352(c). Complainant is notified in accordance with Rules 11(g)(3) and 18, Rules for Judicial-Conduct and Judicial-Disability Proceedings, of the right to appeal this decision by the following procedure:

Rule 18(a) Petition. A complainant or subject judge may petition the Judicial Council of the Third Circuit for review.

Rule 18(b) Time. A petition for review must be filed in the Office of the Circuit Executive within **42 days** after the date of the chief judge's order.

18(b) Form. The petition should be in letter form, addressed to the Circuit Executive, and in an envelope marked "Misconduct Petition" or "Disability

Petition.” The name of the subject judge must not be shown on the envelope. The letter should be typewritten or otherwise legible. It should begin with “I hereby petition the judicial council for review of . . .” and state the reasons why the petition should be granted. It must be signed. There is no need to enclose a copy of the original complaint.

The full text of the Rules for Judicial-Conduct and Judicial-Disability Proceedings is available from the Office of the Circuit Executive and on the Court of Appeals’ internet site, www.ca3.uscourts.gov.

s/ Michael A. Chagares
Chief Judge

Dated: March 13, 2024