

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. No. 03-24-90011

IN RE: COMPLAINT OF JUDICIAL MISCONDUCT
OR DISABILITY

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

MEMORANDUM OPINION

(Filed: March 22, 2024)

PRESENT: CHAGARES, Chief Judge.

This complaint was filed under the Judicial Conduct and Disability Act 28 U.S.C. §§ 351-64, against a United States Magistrate Judge (Subject Judge). For the following reasons, 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).

Complainant filed a federal habeas petition in District Court and subsequently moved for leave to conduct discovery. The respondents to the habeas petition filed a response to the discovery motion, and Complainant filed a reply. Complainant alleges in

his misconduct complaint that, since he filed his reply document on October 3, 2023, the case “has been sitting idle.” However, after Complainant filed the misconduct complaint, the Subject Judge issued a Report and Recommendation on February 12, 2024, advising the District Court to deny the habeas petition. The Subject Judge also entered an order on the same day denying the motion for leave to conduct discovery. Complainant has filed objections to the Report and Recommendation as well as an appeal of the discovery order, both of which remain pending before the District Court.

Complainant’s allegation of delay is subject to dismissal because it is not cognizable under the Act. See Rules 4(b)(2) (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”), 11(c)(1)(B), Rules for Judicial-Conduct and Judicial-Disability Proceedings; see also 28 U.S.C. § 352(b)(1)(A)(ii). He does not allege an improper motive or habitual delay in his misconduct complaint, and a review of the record reveals none.

It is further noted that there was no undue delay here. Four months elapsed between Complainant’s filing his reply document and the Subject Judge’s rulings. Objectively speaking, a period of four months under these circumstances did not constitute a concerning delay. The allegation will be dismissed as frivolous and lacking evidence raising an inference of misconduct. 28 U.S.C. § 352(b)(1)(A)(iii); Rule 11(c)(1)(C), (D), Rules for Judicial-Conduct and Judicial-Disability Proceedings.

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

Michael A. Chagares
Chief Judge

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ORDER

(Filed: March 22, 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.

Michael A. Chagares
Chief Judge

Dated: March 22, 2024