

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. No. 03-24-90022

IN RE: COMPLAINT OF JUDICIAL MISCONDUCT
OR DISABILITY

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

MEMORANDUM OPINION

(Filed: April 2, 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 District 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 civil complaint and, later, an amended complaint in the District Court. The Subject Judge granted Complainant’s motion to proceed in forma pauperis. After Complainant filed a motion requesting the entry of default judgment, defendants’

counsel entered an appearance in the case and responded to the default judgment motion, noting that the defendants had never been served with the complaint, amended complaint, or summons. Complainant filed a motion on February 23, 2024, requesting that the District Court order service on the defendants. Days later, he filed a judicial misconduct complaint against the Subject Judge complaining about the delay in his District Court case.

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. He does not allege habitual delay but maintains that the delay "feels like . . . nepotism [] and favoritism." However, nothing from these circumstances or the record reflects nepotism, favoritism, or any other misconduct by the Subject Judge. Accordingly, Complainant's allegation is also subject to dismissal as frivolous and lacking sufficient evidence to raise an inference of misconduct. See 28 U.S.C. § 352(b)(1)(A)(iii).

It is further noted that there is no undue delay here. In January 2024, the defendants asserted that they were not served with Complainant's lawsuit, and only learned of the lawsuit through a court-monitoring service. The docket reflects that Complainant, proceeding in forma pauperis, requested service of his complaint in a motion filed on February 23, 2024—only a few days before his judicial misconduct

complaint was received. Objectively speaking, there has been no delay by the Subject Judge.

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

s/ Michael A. Chagares
Chief Judge

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ORDER

(Filed: April 2, 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: April 2, 2024