

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

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J.C. No. 03-24-90025

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IN RE: COMPLAINT OF JUDICIAL MISCONDUCT  
OR DISABILITY

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

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MEMORANDUM OPINION

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(Filed: April 16, 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).

Complainant is a prisoner and frequent pro se litigant. Three of his civil rights actions were assigned to the Subject Judge. The Subject Judge granted summary

judgment to the defendants in the first matter, dismissed the second matter for lack of jurisdiction, and the third matter remains pending.

Complainant claims in this complaint of judicial misconduct that the Subject Judge intentionally delayed resolution of pleadings and motions in the three actions before him. Complainant observes that other judges have resolved matters more quickly than the Subject Judge, which purportedly “shows [the Subject Judge’s] incompetence.” Complainant contends that the Subject Judge’s alleged delay is retaliation because Complainant previously filed two misconduct complaints against him. See J.C. No. 03-21-90022, 03-23-90001. Complainant claims “[t]his is judicial abuse and misuse of Federal power that Congress gave [the Subject Judge].” Complainant alleges that, to address the purported delay, he has been forced to file several petitions for a writ of mandamus at substantial expense.<sup>1</sup> He seeks the Subject Judge’s disqualification from the three civil rights actions.

A review of the dockets for Complainant’s three proceedings does not demonstrate that Complainant’s submissions remained unresolved for an objectively excessive period of time. For instance, the second civil rights action was assigned to the Subject Judge in March 2023, the motion to dismiss was fully briefed by August 2023, and the motion was resolved by February 2024. This progression does not reflect undue delay.

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<sup>1</sup> Complainant filed one mandamus petition concerning a matter referenced in this complaint of judicial misconduct. It was dismissed for failure to pay the filing fee. Complainant’s other two mandamus petitions pertain to different matters before the Subject Judge. One was dismissed for failure to pay the filing fee; Complainant withdrew the second and the filing fee was refunded.

Complainant's claim is thus frivolous and unsupported by evidence that would raise an inference that misconduct has occurred. 28 U.S.C. § 352(b)(1)(A)(iii); Rule 11(c)(1)(C), (D), Rules for Judicial-Conduct and Judicial-Disability Proceedings.

Delay, moreover, is not generally cognizable as judicial misconduct absent an improper motive. Rule 4(b)(2), Rules for Judicial-Conduct and Judicial-Disability Proceedings (“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.”). Although Complainant contends the Subject Judge had an improper motive, the record does not substantiate Complainant's allegations of bias, retaliation, incompetence, or any other form of judicial misconduct. These claims are therefore subject to dismissal as frivolous and unsupported by evidence that would raise an inference that misconduct has occurred. 28 U.S.C. § 352(b)(1)(A)(iii); Rule 11(c)(1)(C), (D), Rules for Judicial-Conduct and Judicial-Disability Proceedings.

Finally, although Complainant requests the Subject Judge's disqualification from his cases, Complainant did not move for that relief in his civil rights actions. A recusal motion must be presented to the appropriate judge in the first instance. A substantive decision rendered on such a motion is merits-related and therefore does not, without more, constitute cognizable misconduct. 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.

Based on the foregoing, this complaint will be dismissed pursuant to 28 U.S.C. § 352(b)(1)(A)(ii) and (iii). Complainant filed three prior misconduct complaints that also were dismissed as merits-related, unsubstantiated, and frivolous. See J.C. Nos. 03-20-90038, 03-21-90022, 02-23-90001. Complainant is cautioned that continued filing of repetitive, harassing, or frivolous misconduct complaints may result in the imposition of restrictions pursuant to Rule 10 of the Rules for Judicial-Conduct and Judicial-Disability Proceedings.<sup>2</sup>

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s/ Michael A. Chagares  
Chief Judge

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<sup>2</sup> Rule 10(a) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings provides:

A complainant who has filed repetitive, harassing, or frivolous complaints, or has otherwise abused the complaint procedure, may be restricted from filing further complaints. After giving the complainant an opportunity to show cause in writing why his or her right to file further complaints should not be limited, the judicial council may prohibit, restrict, or impose conditions on the complainant's use of the complaint procedure. Upon written request of the complainant, the judicial council may revise or withdraw any prohibition, restriction, or condition previously imposed.

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ORDER

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(Filed: April 16, 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](http://www.ca3.uscourts.gov).

s/ Michael A. Chagares  
Chief Judge

Dated: April 16, 2024