

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

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J.C. No. 03-24-90062

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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: June 11, 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 Magistrate 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, a state prisoner, is a pro se plaintiff in a civil rights action that was filed in 2019 and was referred to the Subject Judge. In October 2023, the two defendants remaining in the case moved for summary judgment. The Subject Judge issued a Report

and Recommendation recommending that the motion be granted. Complainant has filed objections. The presiding District Judge has not yet ruled on the summary judgment motion.

This complaint of misconduct specifically concerns the docket entry for the Appendix to the defendants' summary judgment motion, which reflects that two of the seven Appendix exhibits were "replaced" the day after the Appendix was filed. Complainant alleges that he discovered the docket entry concerning exhibit replacements shortly after the Subject Judge issued the Report and Recommendation. Complainant suspects that the replacements were actually done much later — after Complainant responded to the summary judgment motion — and that the docket sheet was "backdated." Complainant surmises that the Subject Judge may have conspired with the defense attorneys and the Clerk of the Court to make the replacements and to backdate the docket entry, or communicated ex parte with the defense concerning the replaced documents without giving Complainant notice or an opportunity to protest the change. Complainant claims that the Subject Judge's conduct is prejudicial to the effective and expeditious administration of the business of the courts and violates the Code of Conduct for United States Judges.<sup>1</sup>

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<sup>1</sup> Private attorneys and court employees who are not federal judges are not covered by the Judicial Conduct and Disability Act, so allegations against them are not cognizable in this proceeding. See 28 U.S.C. §§ 351, 352(b)(1)(A)(i); Rule 1, Rules for Judicial-Conduct and Judicial-Disability Proceedings. Allegations concerning non-covered individuals will not be addressed in this opinion.

Complainant has raised identical concerns about the docket entry and document replacements in his pending objections to the Report and Recommendation. Any dispute with the presiding District Judge's ruling on those objections will qualify as merits related and therefore does not constitute cognizable misconduct. 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."). To the extent they are merits related, the allegations are therefore 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

A careful review of the record in Complainant's case does not lend support to Complainant's claim that judicial misconduct has occurred. There is no evidence that the Subject Judge played a role in replacing two exhibits to the defendants' summary judgment motion or in "backdating" the docket entry. Docket entries are typically made by court administrative staff, not judges, and there is no indication that the docket entry was handled otherwise in this instance. There is nothing inherently inappropriate about the docket entry in question. Complainant's belief that the docket entry reflects a conspiracy, improper backdating, or an ex parte exchange is based on nothing more than suspicion, which is insufficient to support an allegation of judicial misconduct. Complainant's allegations are therefore subject to dismissal as 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)(D), 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)(i), (ii), and (iii).

s/ Michael A. Chagares  
Chief Judge

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ORDER

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(Filed: June 11, 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)(i), (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: June 11, 2024