

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. No. 03-24-90071

IN RE: COMPLAINT OF JUDICIAL MISCONDUCT
OR DISABILITY

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

MEMORANDUM OPINION

(Filed: September 6, 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 prisoner and frequent pro se litigant, filed a pro se civil rights action that has been referred to the Subject Judge.¹ The Subject Judge entered an order in December 2022 directing Complainant to put forth all evidence as to liability and injury by January 2023. Complainant complied and, after being granted a continuance, the defendant responded at the end of February 2023. Complainant then filed a series of additional submissions, including an objection to the defendant's continuance, a motion to present additional evidence, a motion under Rule 60(b) of the Federal Rules of Civil Procedure, a motion for default judgment, and motions seeking mandamus relief. In February 2024, the Subject Judge entered a memorandum order addressing many of the submissions and observing that Complainant's frequent filings were hampering his ability to resolve the matter. Since that time, Complainant has filed three additional motions. The motions remain pending.

In this complaint of judicial misconduct, Complainant alleges that, as of the date he filed the misconduct complaint, ninety-nine days had elapsed and the defendant had not yet responded to one of Complainant's motions. Complainant argues that the defendant's failure to timely respond should be viewed as conceding that judgment should be entered in Complainant's favor. Complainant further alleges that the Subject Judge's failure to resolve the case "is the result of partiality, prejudice, bias and ill will." Complainant claims that the Subject Judge is "sadistically and maliciously prolong[ing his] civil case until the Plaintiff comes down with a perilous disease or DEATH." Complainant contends

¹ The presiding District Judge is not a subject of this complaint of judicial misconduct.

that the Subject Judge is biased against him because Complainant is an inmate and is black, poor, and uneducated, and because the Subject Judge dismissed one of Complainant's prior civil actions.

Many of Complainant's allegations reflect a disagreement with rulings rendered in his proceeding, such as the decision to grant the defendants a continuance. Complainant's efforts to collaterally challenge judicial decisions are merits related and do 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."). Merits-related allegations 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 also claims that the Subject Judge has unduly delayed resolution of his case. Delay generally is not 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 alleges improper motive in the form of bias and malice, the record does not substantiate Complainant's allegations. Additionally, while there are motions that have been pending in Complainant's case for some time, it is apparent the purported delay in is due in no small part to Complainant's own behavior, as his frequent

submissions contribute substantially to the amount of time required to resolve the matter. Complainant's claim of misconduct based on undue delay is 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.

Complainant's remaining allegations, when considered apart from the merits-related claims, are unsubstantiated. A careful review of the record reveals no evidence that the Subject Judge harbors a bias against Complainant based on Complainant's race, education, socioeconomic status, or prior litigation experience. The remaining claims are thus 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.

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

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ORDER

(Filed: September 6, 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: September 6, 2024