

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. No. 03-24-90080

IN RE: COMPLAINT OF JUDICIAL MISCONDUCT
OR DISABILITY

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

MEMORANDUM OPINION

(Filed: November 5, 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, a state prisoner, filed a petition for a writ of habeas corpus in May 2018, in which he claimed that the state courts violated his right to a speedy trial. The

matter was assigned to the Subject Judge, who referred it to a Magistrate Judge.¹ After the respondent was granted several extensions, a response to the petition was filed in March 2019. The Magistrate Judge issued a report and recommendation in August 2020, recommending that the petition be denied for lack of merit. Complainant filed objections to the Magistrate Judge's report and recommendation. In September 2021, the Subject Judge overruled the objections and denied the habeas petition. Complainant appealed. A panel of the Court of Appeals declined to issue a certificate of appealability.

In this complaint of misconduct, Complainant alleges that the Subject Judge unduly delayed Complainant's habeas proceeding. Complainant claims that the response to his petition should have been filed within twenty-three days, so the grant of three extensions amounting to approximately ten months was improper. Complainant further claims that the Subject Judge failed to grant Complainant a hearing and took too long to issue the ruling on the petition. Complainant attributes the alleged delay by the Subject Judge "to court congestion and the unfair practice and treatment of pro se litigant's petition."

Several of Complainant's allegations are not cognizable because they challenge the merits of judicial rulings. Rule 4(b)(1), Rules for Judicial-Conduct and Judicial-Disability Proceedings ("Cognizable misconduct does not include an allegation that calls into

¹ Complainant named the Magistrate Judge as a Subject Judge of this misconduct complaint. As Complainant was informed, however, the Magistrate Judge has retired from the bench. Complaints under the Judicial Conduct and Disability Act may only be filed against judges currently holding an office described in Rule 1(b) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings. The complaint therefore was not docketed as to the retired Magistrate Judge and the allegations concerning the Magistrate Judge will not be considered. See 28 U.S.C. § 352(b)(1)(A)(i).

question the correctness of a judge’s ruling, including a failure to recuse.”). For instance, Complainant’s disputes with the Subject Judge’s decision to grant extensions of time and the decision not to hold a hearing are clearly merits related. “The misconduct procedure [under the Judicial Conduct and Disability Act] is not designed as a substitute for, or supplement to, appeals or motions for reconsideration. Nor is it designed to provide an avenue for collateral attacks or other challenges to judges’ rulings.” In re Memorandum of Decision of Judicial Conference Committee on Judicial Conduct and Disability, 517 F.3d 558, 561 (U.S. Jud. Conf. 2008). Complainant’s 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’s allegation of undue delay also is subject to dismissal. See 28 U.S.C. § 352(b)(1)(A)(ii); Rules 4(b)(2), 11(c)(1)(B), 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.” Rule 4(b)(2), Rules for Judicial-Conduct and Judicial-Disability Proceedings. Complainant has not claimed habitual delay in a significant number of unrelated cases. Additionally, to the extent Complainant attributes the alleged delay to court congestion, court congestion is not an improper motive on the part of the Subject Judge. Complainant has implied that the Subject Judge is biased against pro se litigants. While this allegation does set forth an improper motive, it is entirely lacking in evidentiary support. A careful

review of the record reveals no evidence to substantiate such a claim. The allegation is therefore 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)(i), (ii), and (iii).

s/ Michael A. Chagares
Chief Judge

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ORDER

(Filed: November 5, 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.

s/ Michael A. Chagares
Chief Judge

Dated: November 5, 2024