

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

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J.C. No. 03-21-90061

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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: December 6, 2021)

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 was a pro se plaintiff in a disability discrimination action before the Subject Judge. At Complainant’s request, the Subject Judge administratively terminated

the case. Complainant later moved to reopen the case and to seal it. Those motions remain pending.

In this complaint of judicial misconduct, Complainant alleges that the Subject Judge's<sup>1</sup> inaction on the pending motions to reopen and to seal constitutes a "de fact[o] denial of the motion without actually saying so" and demonstrates "that the judges in this case are working with [the defendants] to continue destroying my reputation and health."

To the extent Complainant's allegations constitute a complaint of delay in ruling on Complainant's pending motions, "[c]ognizable 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 identified any habitual delay in a significant number of cases and has offered no evidence to substantiate a claim that the purported delay in ruling in Complainant's cases is attributable to an improper motive. Accordingly, the claim is not cognizable misconduct and is 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.

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<sup>1</sup> Complainant's allegations appear to indicate that he may have intended to bring a complaint against the Magistrate Judge who is participating in his case, although Complainant did not properly name the Magistrate Judge. Having reviewed the allegations concerning the Magistrate Judge, the allegations do not provide "reasonable grounds for inquiry" into the existence of judicial misconduct. Accordingly, no complaint will be identified against the Magistrate Judge. See Rule 5(a), Rules for Judicial-Conduct and Judicial-Disability Proceedings.

Moreover, the motion to reopen has been pending for a period of approximately five months and the motion to seal has been pending for just over one month. As a factual matter, such periods do not constitute excessive delay. Accordingly, Complainant's allegations are 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. Indeed, despite Complainant's assumption that his motions have been "de facto" denied, there is good reason to remain confident that the Subject Judge will render a substantive ruling on the motions in due course.

Finally, apart from the purported delay itself, the record does not reflect any evidence whatsoever that the Subject Judge is "working with," or biased in favor of, the defendants in Complainant's case. Accordingly, Complainant's allegations of bias are 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

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(Filed: December 6, 2021)

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: December 6, 2021