

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

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J.C. No. 03-22-90023

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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: May 19, 2022)

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 pro se plaintiff in a civil suit before the Subject Judge. Because the defendant did not respond to the complaint, in August 2021, the Clerk of the District Court entered a default in Complainant’s favor. Complainant thereafter moved for a

default judgment. The motion has been pending before the Subject Judge for over six months. Complainant alleges that she has contacted various court employees to inquire about her pending motion and has been informed that the Subject Judge will render a decision “in due course.” Recently, the case was reassigned to a new Magistrate Judge.

In this complaint of judicial misconduct, Complainant alleges “unnecessary excessive delay” on the part of the Subject Judge. Complainant contends that the “deadline” for a decision on her motion passed in October 2021 and that the Subject Judge’s inaction after that date constitutes retaliation. Complainant further alleges that “[t]he obvious unlawful, disruptive obstruction and behavior of [the Subject Judge] . . . is not only harmful to [Complainant] but to the entire USA image and Judiciary system.”

“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 declares that the Subject Judge’s “proclaimed right to immunity and illegal procedure” is a “**policy** in the Court,” but does not identify a significant number of unrelated cases reflecting the alleged policy. Similarly, Complainant offers no evidence to suggest that the purported delay is attributable to retaliation. Accordingly, the claim of delay 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.

In addition, Complainant's motion for a default judgment has been pending for over six months. While this is not an insubstantial length of time, such a period does not per se constitute excessive delay. Moreover, Complainant's assumption that the Subject Judge missed a "deadline" in October 2021 is mistaken. There is no specific deadline for a District Court to rule on a pending motion for default judgment. 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. As Complainant has already been advised, there is good reason to expect that the Subject Judge will render a ruling in due course.

Finally, apart from the purported delay itself, the record does not reflect any evidence that the Subject Judge has retaliated against Complainant or has otherwise engaged in any form of judicial misconduct. 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.

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: May 19, 2022)

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: May 19, 2022