

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

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J.C. Nos. 03-23-90064, 03-23-90065

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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: October 13, 2023)

PRESENT: CHAGARES, Chief Judge.

This complaint is filed under the Judicial Conduct and Disability Act, 28 U.S.C. §§ 351-64, against two United States District Judges (“Subject Judge I” and “Subject Judge II”). For the reasons that follow, 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).

In December 2022, Complainant filed a civil complaint against several defendants and the matter was assigned to Subject Judge II. Complainant filed a “Motion for Alternative Service” of the summons on one of the defendants. Subject Judge II denied

the motion because it did not comply with Local Rule 7.1(c), which requires litigants to file a supporting brief with legal contentions and authorities when they have not certified that a motion is uncontested. Soon after that, Complainant's case was reassigned to Subject Judge I. Complainant filed another motion for service, and Subject Judge I denied it for failure to comply with Local Rule 7.1(c) and Federal Rule of Civil Procedure 4. Between March and May 2023, Complainant filed several motions for default judgment. Subject Judge I denied those motions. As grounds, Subject Judge I noted that no default had been entered prior to Complainant's requests for judgment, and further explained that Complainant's affidavits of service as to several defendants lacked the name of the authorized agent for service and accordingly were deficient under Federal Rules of Civil Procedure 4(h)(1)(B). Ultimately, Subject Judge I entered an order on August 7, 2023, observing that Complainant had not made service on the defendants within 90 days of filing the complaint as required under Federal Rule of Civil Procedure 4(m), and warning Complainant that he if did not file proof of service by August 28, 2023, and did not show good cause, the court would dismiss the action without prejudice against any unserved defendant.

Complainant submitted this judicial misconduct complaint, alleging that there have been "several discrepancies in regard to the acceptance and negligence of the Summons," and recounting his difficulties in attempting to serve the defendants in his case. Complainant relates that Subject Judge II denied his motion for alternative service, but he makes no allegation of improper behavior against her. To the extent that his broad

“claim” of “discrepancies” includes Subject Judge II, the complaint will be dismissed as unsubstantiated and frivolous. See 28 U.S.C. § 352(b)(1)(A)(iii); Rule 11(c)(1)(C), (D), Rules for Judicial-Conduct and Judicial-Disability Proceedings.

Complainant argues that Subject Judge I erred in his rulings because the language of Federal Rule of Civil Procedure 4(h)(1)(B) does not mandate inclusion of the authorized agent’s name. However, this assertion that Subject Judge I erred in his legal interpretation of the rules is clearly merits-based and not cognizable in a judicial misconduct action. 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. Likewise, to the extent that Complainant seeks review of Subject Judge I’s rulings, the allegations are subject to dismissal because this proceeding is not “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). In any event, the District Court docket and referenced materials in the misconduct complaint have been reviewed, and there is no indication of any misconduct by Subject Judge I. The complaint is thus also subject to dismissal as frivolous and unsubstantiated. See 28 U.S.C. § 352(b)(1)(A)(iii); Rule 11(c)(1)(C), (D), Rules for Judicial-Conduct and Judicial-Disability Proceedings.

Accordingly, the complaint will be dismissed pursuant to 28 U.S.C.  
§ 352(b)(1)(A)(ii) and (iii).

Michael A. Chagares  
Chief Judge

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ORDER

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(Filed: October 13, 2023)

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).

Michael A. Chagares  
Chief Judge

Dated: October 13, 2023