

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. Nos. 03-24-90005, 03-24-90006

IN RE: COMPLAINT OF JUDICIAL MISCONDUCT
OR DISABILITY

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

MEMORANDUM OPINION

(Filed: January 24, 2024)

PRESENT: CHAGARES, Chief Judge.

This complaint was filed under the Judicial Conduct and Disability Act 28 U.S.C. §§ 351-64, against a United States District Judge (Subject Judge I) and a United States Magistrate Judge (Subject Judge II). For the following reasons, 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’s judicial misconduct complaint relates to a civil lawsuit he filed in District Court. The case was reassigned to Subject Judge I and referred to Subject Judge

II. The defendants filed a motion to dismiss, Complainant submitted a response, and defendants filed a reply brief. The Complainant complains that more than 221 days have passed since the motion to dismiss has been fully briefed. He contends the delay is “an abridgement to [his] constitutional right to petition the judiciary to redress [his] grievances.”

Complainant’s allegation of delay is subject to dismissal because it is not cognizable under the Act. See Rules 4(b)(2) (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”), 11(c)(1)(B), Rules for Judicial-Conduct and Judicial-Disability Proceedings. He does not allege an improper motive in his misconduct complaint, and a review of the record reveals none. Accordingly, Complainant’s allegation is also subject to dismissal as lacking sufficient evidence to raise an inference of misconduct. See 28 U.S.C. § 352(b)(1)(A)(iii).

It is further noted that Complainant’s petition for a writ of mandamus concerning the delay was recently denied without prejudice by the Court of Appeals. In that matter, the Court ruled that the delay had not yet amounted to a failure to exercise jurisdiction. To the extent that Complainant is attempting to appeal or collaterally attack that ruling through these proceedings, his claim will also be dismissed as merits-related and not cognizable. See 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”); see also In re Memorandum of Decision of Judicial Conference Committee on Judicial Conduct and Disability, 517 F.3d 558, 561 (U.S. Jud. Conf. 2008) (“The Act is intended to further ‘the effective and expeditious administration of the business of the courts.’ It would be entirely contrary to that purpose to use a misconduct proceeding to obtain redress for—or even criticism of—the merits of a decision with which a litigant or misconduct complainant disagrees.”).

Based on the foregoing, 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

(Filed: January 24, 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.

Michael A. Chagares
Chief Judge

Dated: January 24, 2024