

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 21-1960

PAUL E. PIECZYNSKI,
Appellant

v.

COMMONWEALTH OF PENNSYLVANIA; STEFANIE J. SALAVANTIS, Acting
District Attorney; MICHAEL T. VOUGH, Acting Judge; DAVID W. LUPAS

On Appeal from the United States District Court
for the Middle District of Pennsylvania
(D.C. Civil Action No. 3-20-cv-01502)
District Judge: Honorable Malachy E. Mannion

Submitted Pursuant to Third Circuit LAR 34.1(a)
October 15, 2021

Before: GREENAWAY, JR., PORTER and NYGAARD, Circuit Judges

JUDGMENT

This cause came to be considered on the record from the United States District Court for the Middle District of Pennsylvania and was submitted pursuant to Third Circuit LAR 34.1(a) on October 15, 2021. On consideration whereof, it is now hereby ORDERED and ADJUDGED by this Court that the judgment of the District Court

APPENDIX A

entered April 19, 2021, be and the same is hereby affirmed. Costs shall not be taxed. All of the above in accordance with the opinion of this Court.

ATTEST:

s/ Patricia S. Dodszuweit
Clerk

Dated: December 2, 2021



Teste: *Patricia S. Dodszuweit*
Clerk, U.S. Court of Appeals for the Third Circuit

NOT PRECEDENTIAL

**UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT**

No. 21-1960

**PAUL E. PIECZYNSKI,
Appellant**

v.

**COMMONWEALTH OF PENNSYLVANIA; STEFANIE J. SALAVANTIS, Acting
District Attorney; MICHAEL T. VOUGH, Acting Judge; DAVID W. LUPAS**

On Appeal from the United States District Court
for the Middle District of Pennsylvania
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Submitted Pursuant to Third Circuit LAR 34.1(a)
October 15, 2021

Before: GREENAWAY, JR., PORTER and NYGAARD, Circuit Judges
(Opinion filed: December 2, 2021)

OPINION*

PER CURIAM

* This disposition is not an opinion of the full Court and pursuant to I.O.P. 5.7 does not constitute binding precedent.

APPENDIX B

Pro se appellant Paul Pieczynski appeals the District Court's order dismissing his action after he failed to pay the filing and administrative fees. For the reasons detailed below, we will affirm the District Court's judgment.

Pieczynski initiated this action by filing a petition to confirm an arbitration award along with \$47, which at the time was the miscellaneous fee that the Middle District of Pennsylvania charged for "filing any document that is not related to a pending case or proceeding." Middle District of Pennsylvania, District Court Miscellaneous Fees, <https://www.pamd.uscourts.gov/district-court-miscellaneous-fees>. The Magistrate Judge informed Pieczynski that he was required to pay the \$400 fees for a standard civil action. When Pieczynski did not comply, the Magistrate Judge set a deadline of November 13, 2020, to pay the fees or file an application to proceed in forma pauperis.

Pieczynski did not pay the fees by that deadline, and on March 23, 2021, the Magistrate Judge recommended that the action be dismissed for failure to prosecute. Over Pieczynski's objection, the District Court adopted the report and recommendation and dismissed the case. Pieczynski appealed.

We have jurisdiction under 28 U.S.C. § 1291. See Wynder v. McMahon, 360 F.3d 73, 76 (2d Cir. 2004). We review the District Court's dismissal for failure to prosecute for abuse of discretion. See Briscoe v. Klaus, 538 F.3d 252, 257 (3d Cir. 2008).

We agree with the District Court's analysis here. Pursuant to 28 U.S.C. § 1914(a), "[t]he clerk of each district court shall require the parties instituting any civil action, suit

or proceeding in such court, whether by original process, removal or otherwise, to pay a filing fee of \$350.”¹ We have recently characterized an application to confirm an arbitration award as a “summary proceeding.” Teamsters Local 177 v. United Parcel Services, 966 F.3d 245, 252 (3d Cir. 2020). We are satisfied that a “summary proceeding” qualifies as a “proceeding” under § 1914(a).

Pieczynski argues that his was a “miscellaneous filing,” but we can find no authority that supports his interpretation. The few District Courts to have addressed the issue have concluded that an application to confirm an arbitration award is not a miscellaneous filing, see, e.g., Rodrick v. Kauffman, 455 F. Supp. 3d 546, 548 (M.D. Tenn. 2020), and the filing is not listed among the 15 types of miscellaneous filings identified in the Administrative Office of the United States District Court Clerks’ Manual, see § 4.03(a)(1). Accordingly, we conclude that the District Court imposed the correct fees.

Moreover, the District Court did not err in dismissing the action without prejudice after Pieczynski refused to make payment. Cf. 3d Cir. L.A.R. 107.2 (providing that Clerk of this Court may dismiss appeal for failure to prosecute if appellant does not pay fees within 14 days of notice); In re Westinghouse Sec. Litig., 90 F.3d 696, 704 (3d Cir. 1996) (stating that after plaintiff failed to replead after being directed to do so, “it is difficult to

¹ There is also an additional administrative fee of \$52. See District Court Miscellaneous Fee Schedule, <https://www.uscourts.gov/services-forms/fees/district-court-miscellaneous-fee-schedule>.

conceive of what other course the court could have followed" apart from dismissing the complaint (citation and quotation marks omitted).

Accordingly, we will affirm the District Court's judgment.

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA

PAUL E. PIECZYNSKI, :
Plaintiff : CIVIL ACTION NO. 3:20-1502
v. : (JUDGE MANNION)
COMMONWEALTH OF PA, et al., :
Defendants :

ORDER

In accordance with the memorandum issued this same day, **IT IS**
HEREBY ORDERED THAT:

- (1) The report and recommendation of Judge Arbuckle, **(Doc. 7)**, is **ADOPTED IN ITS ENTIRETY**.
- (2) The plaintiff's complaint, **(Doc. 1)**, is **DISMISSED WITHOUT PREJUDICE** pursuant to Fed.R.Civ.P. 41.
- (3) Plaintiff's "Motion to Confirm Common Law Arbitration Award", **(Doc. 6)**, and "Motion for Relief", **(Doc. 9)**, are **DENIED AS MOOT**.
- (4) The objections to the report filed by plaintiff, **(Doc. 8)**, are **OVERRULED**.

APPENDIX C

(5) The clerk of court is directed to close this case.

s/ Malachy E. Mannion

MALACHY E. MANNION

United States District Judge

Date: April 19, 2021

20-1502-02-ORDER

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA

PAUL E. PIECZYNSKI, :
:
Plaintiff : CIVIL ACTION NO. 3:20-1502
:
v. :
: (JUDGE MANNION)
COMMONWEALTH OF PA, *et al.*, :
:
Defendants :
:

MEMORANDUM

Pending before the court is the report and recommendation, (Doc. 7), of Magistrate Judge Arbuckle recommending that this action to enforce an alleged arbitration award against the Commonwealth of Pennsylvania, two Luzerne County Court Judges, and the Luzerne County District Attorney, filed, *pro se*, by plaintiff Paul E. Pieczynski, be dismissed without prejudice, pursuant to Fed.R.Civ.P. 41, since plaintiff refuses to pay the proper filing fee for a civil case despite being directed to do so by the court. The instant report was filed on March 23, 2021.

On April 7, 2021, plaintiff filed objections to the report and recommendation, (Doc. 8), as well as a Motion for Relief, (Doc. 9), in which he seeks an order from this court to direct the Luzerne County Clerk of Court to return bail money to him. After having reviewed the record, the court will

APPENDIX D

ADOPT IN ITS ENTIRETY the report and recommendation. Plaintiff's objections will be **OVERRULED**. Plaintiff's complaint, (Doc. 1), will be **DISMISSED WITHOUT PREJUDICE**. Plaintiff's "Motion to Confirm Common Law Arbitration Award", (Doc. 6), and Motion for Relief, (Doc. 9), will be **DENIED AS MOOT**.

II. STANDARD OF REVIEW

When objections are timely filed to the report and recommendation of a magistrate judge, the district court must review *de novo* those portions of the report to which objections are made. 28 U.S.C. §636(b)(1); Brown v. Astrue, 649 F.3d 193, 195 (3d Cir. 2011). Although the standard is *de novo*, the extent of review is committed to the sound discretion of the district judge, and the court may rely on the recommendations of the magistrate judge to the extent it deems proper. Rieder v. Apfel, 115 F.Supp.2d 496, 499 (M.D. Pa. 2000) (citing United States v. Raddatz, 447 U.S. 667, 676 (1980)).

With respect to the portions of a report and recommendation to which no objections are made, the court should, as a matter of good practice, "satisfy itself that there is no clear error on the face of the record in order to accept the recommendation." Fed.R.Civ.P. 72(b), advisory committee notes; see also Univac Dental Co. v. Dentsply Intern., Inc., 702 F.Supp.2d 465, 469

(M.D. Pa. 2010) (citing Henderson v. Carlson, 812 F.2d 874, 878 (3d Cir. 1987) (explaining judges should give some review to every report and recommendation)). Nevertheless, whether timely objections are made or not, the district court may accept, not accept, or modify, in whole or in part, the findings or recommendations made by the magistrate judge. 28 U.S.C. §636(b)(1); Local Rule 72.31.

III. DISCUSSION

Since the report states the complete background of this case, it shall not be 'repeated herein. Suffice to say that this case is the second time plaintiff has attempted to file a case trying to enforce an alleged Luzerne County Court arbitration award against court officials, including judges, in which he erroneously contends that his action is a miscellaneous filing and he refuses to pay the civil action filing fee required to proceed in this court. The present case was filed on August 20, 2020. Plaintiff's other case, filed on October 8, 2020, was 20-CV-1849, M.D. Pa., and it was dismissed by this court on February 3, 2021, for failure to prosecute due to plaintiff's failure to pay the proper filing fee after he was repeatedly directed to pay by the court. Similar to his 20-CV-1849 case, plaintiff again refuses to pay the filing fee as he was directed to do in both of his cases. Since plaintiff once again refuses

to pay the proper filing fee for a civil action or seek leave of court to proceed *in forma pauperis*, and he once again ignores the orders of the court, the instant case will be dismissed under Rule 41, like his other case. Indeed, based on his 20-CV-1849 case, plaintiff is well aware of his obligation to pay the proper filing fee.

Since Judge Arbuckle correctly considered and balanced the six factors enumerated in Poulis v. State Farm Fire & Cas. Co., 747 F.2d 863 (3d Cir. 1984), the court does not repeat his analysis.

Additionally, the named defendants are entitled to various types of immunity with respect to plaintiff's claims, such as 11th Amendment immunity for the Commonwealth, absolute judicial immunity, and prosecutorial immunity. In fact, as this court noted in plaintiff's prior case, the Luzerne County Court Judges he names as defendants are protected by absolute immunity for all judicial acts except those made in the clear absence of jurisdiction. Cleavenger v. Saxner, 474 U.S. 193, 199, 106 S.Ct. 496 (1985); Stump v. Sparkman, 435 U.S. 349, 356–67, 98 S.Ct. 1099 (1978); Clark v. Conahan, 737 F.Supp.2d 239, 255-256 (M.D. Pa. 2010).

Accordingly, plaintiff's complaint, (Doc. 1), will be **DISMISSED WITHOUT PREJUDICE**. See LeFever v. United States, 2020 WL 4551235 (M.D. Pa. Aug. 6, 2020) (holding "Rule 41(b) of the Federal Rules of Civil

Procedure authorizes the Court [under its "inherent power"] to dismiss an action '[i]f the plaintiff fails to prosecute."); Kearney v. Winstead, 2013 WL 664904 (M.D. Pa. Jan. 29, 2013), adopted by 2013 WL 656910, (court dismissed case without prejudice in accordance with Rule 41(b) due to plaintiff's failure to comply with the Court's Orders to pay the filing fee).

IV. CONCLUSION

Accordingly, the report and recommendation of Judge Arbuckle, (Doc. 7), is **ADOPTED IN ITS ENTIRETY**, and the plaintiff's complaint, (Doc. 1), is **DISMISSED WITHOUT PREJUDICE** pursuant to Fed.R.Civ.P. 41. Plaintiff's "Motion to Confirm Common Law Arbitration Award", (Doc. 6), and "Motion for Relief", (Doc. 9), are **DENIED AS MOOT**. The objections filed by plaintiff, (Doc. 8), to the report are **OVERRULED**. A separate order shall issue.

s/ Malachy E. Mannion
MALACHY E. MANNION
United States District Judge

Date: April 19, 2021

20-1502-01

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA

PAUL A. PIECZYNSKI,) CIVIL ACTION NO. 3:20-CV-1502
Plaintiff)
) (MANNION, D.J.)
v.)
) (ARBUCKLE, M.J.)
COMMONWEALTH OF)
PENNSYLVANIA, *et al.*,)
Defendants)

REPORT & RECOMMENDATION

I. INTRODUCTION

Plaintiff seeks to enforce a purported arbitration award against the Commonwealth of Pennsylvania, two state court judges, and a district attorney, apparently in response to two state court criminal proceedings. Plaintiff contends that the matter is a miscellaneous filing and refuses to pay the civil action filing fee, despite orders directing him to do so. Because the matter is a civil action, and because Plaintiff has not paid the filing fee or moved for leave to proceed *in forma pauperis*, I recommend dismissal of the case.

II. BACKGROUND

On August 20, 2020, Paul A. Pieczynski, proceeding *pro se*, filed a Complaint to confirm and enforce an “arbitration award” against the following Defendants:

- (1) Commonwealth of Pennsylvania;
- (2) Stefanie J. Salavantis, Luzerne County District Attorney;

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- (3) Michael T. Vough, a Luzerne County Common Pleas Judge; and
- (4) David W. Lupas, a Luzerne County Common Pleas Judge.

(Doc. 1). Along with his Complaint, Plaintiff submitted \$47.00 to pay the miscellaneous filing fee.¹ To date, Plaintiff has been instructed on multiple occasions that this case cannot proceed as a miscellaneous case, and that he is required to pay the full civil filing fee or request leave to proceed *in forma pauperis*. (Docs. 2, 5). Plaintiff was also advised that the failure to pay the correct fee or request leave to proceed *in forma pauperis* on or before November 13, 2020, may result in the dismissal of his Complaint. (Doc. 5).

III. ANALYSIS

A. PLAINTIFF'S CASE SHOULD NOT BE FILED AS A MISCELLANEOUS CASE

In this case, Plaintiff has been ordered twice to pay the full filing fee. (Docs. 2, 5). Plaintiff has instead filed a "Request to Confirm and Enforce Common Law

¹ The subject of the arbitration is not entirely clear from the face of the Complaint. It appears Plaintiff is attempting to dispute two State Court criminal proceedings against him in which he entered guilty pleas, *Commonwealth v. Pieczynski*, CP-40-CR-0002993-2017 (C.P. Luzerne County) and *Commonwealth v. Pieczynski*, CP-40-CR-0002070-2016 (C.P. Luzerne County), through arbitration with a private arbitration firm, LAMG International Arbitration. This firm has been criticized by at least one other court. *See Machul v. Florida*, No. 3:19-mc-11, 2020 WL 1976465 (S.D. Ohio Apr. 24, 2020) (noting there is "scant" information about what LAMG is, and that aspects of the arbitration award create a "stigma of illegitimacy."). Here, the order accompanying the arbitration award states that "[Defendants] are estopped from maintaining and/or bringing forth any action against the Claimant, the Claimant's heirs, and/or the Claimant's properties permanently" and orders Defendants to pay Plaintiff \$26,800,000.00. (Doc. 1-6, p. 22-23).

Arbitration Award" (Doc. 4) and a "Motion to Confirm Common Law Arbitration Award" (Doc. 6). He argues that enforcing the arbitration award "is not a judicial act but an administrative act by the clerk or a judge. There exist no controversy to adjudicate. The well informed cat bird sitting [sic] Respondents time has tolled. The Award must be confirmed." (Doc. 6, pp. 1-2).

Section 1914 of Title 28 of the United States Code sets forth the fee schedule for a District Court. The statute provides that:

- (a) The clerk of each district court shall require the parties instituting a civil action, suit or proceeding in such court, when by original process, removal or otherwise, to pay a filing fee of \$350, except that on application for a writ of habeas corpus the filing fee shall be \$5.
- (b) The clerk shall collect from parties such additional fees only as are prescribed by the Judicial Conference of the United States.
- (c) Each District court by rule or by standing order may require advance payment of fees.

28 U.S.C. § 1914 (2019).²

In addition, under the version of 28 U.S.C. § 1914(b) effective when Plaintiff initiated this case, the Judicial Conference of the United States prescribed a \$50.00

² At the time Plaintiff filed his Complaint and the Court directed him to pay the full civil filing fee or request leave to file *in forma pauperis*, the District Court's fee schedule required a fee of \$400.00 (a \$350.00 filing fee plus a \$50.00 administrative fee) to initiate a civil action and a \$47.00 filing fee to initiate a miscellaneous case. On December 1, 2020, those fees increased. The fee for initiating a civil action is currently \$402.00 (\$350.00 plus a \$52.00 administrative fee), and a filing fee to initiate a miscellaneous case is \$49.00.

administrative fee for filing a civil action, suit, or proceeding in a district court, making the total fee for initiating a civil case \$400.00. The Judicial Conference also provides that the fee for filing any document not related to a pending case or proceeding (a miscellaneous case) is \$47.00.

As other courts have explained:

Miscellaneous numbers are assigned to a wide variety of matters filed with the court which are not properly considered civil or criminal cases. These matters, however, may be directly or indirectly related to civil or criminal cases pending within the district or another district. In general, miscellaneous actions are used for **administrative matters** that require resolution through the judicial system.

Rodrick v. Kauffman, 435 F. Supp.3d 546, 547 (M.D. Tenn. 2020) (quoting Administrative Office of the United States Courts, District Clerks' Manual, Case Opening, § 4.03(a)(1)). As explained in *Rodrick*, miscellaneous case numbers are assigned to "ancillary and supplementary proceedings not defined as civil actions," including the following:

foreign subpoenas, registration of judgment from another district, motion to quash deposition subpoena, motion for protective order, administrative deposition subpoena, application to perpetuate testimony, receiverships, letter rogatory from other districts, warrant for arrest of a juror, pen registers, wire interceptions, video interceptions, grand jury matters, internal revenue service third party record keeper actions, and proceedings against sureties.

Id.

In *Rodrick*, the court also observed that motions or complaints to confirm or enforce an arbitration award, like the Complaint at issue in this case, are generally

not entitled to a miscellaneous number. *Id.* (citing *McClellan v. Azrilyan*, 31 F.Supp.2d 707, 711 (W.D. Mo. 1998) (noting that a motion to confirm an arbitration award is “analogous to a complaint or counterclaim in a civil case.”)). Therefore, to proceed with this case, Plaintiff is required to pay the filing fee to initiate a civil action, or request leave of court to proceed *in forma pauperis*.

B. PLAINTIFF’S COMPLAINT SHOULD BE DISMISSED PURSUANT TO FED. R. CIV. P. 41(B) FOR FAILURE TO PROSECUTE OR ABIDE BY A COURT ORDER

Rule 41(b) of the Federal Rules of Civil Procedure authorizes a court to dismiss a civil action for failure to prosecute, stating that, “[i]f the plaintiff fails to prosecute or to comply with these rules or a court order, a defendant may move to dismiss the action or any claim against it.” Fed. R. Civ. P. 41(b). Decisions regarding dismissal of actions for failure to prosecute rest in the sound discretion of the Court, and will not be disturbed absent an abuse of that discretion. *Emerson v. Thiel College*, 296 F.3d 184, 190 (3d Cir. 2002) (citations omitted). That broad discretion is guided by certain factors, commonly referred to as *Poulis* factors. As the United States Court of Appeals for the Third Circuit has noted,

To determine whether the District Court abused its discretion [in dismissing a case for failure to prosecute], we evaluate its balancing of the following factors: (1) the extent of the party's personal responsibility; (2) the prejudice to the adversary caused by the failure to meet scheduling orders and respond to discovery; (3) a history of dilatoriness; (4) whether the conduct of the party or the attorney was willful or in bad faith; (5) the effectiveness of sanctions other than dismissal, which entails an analysis of alternative sanctions; and (6) the

meritoriousness of the claim or defense. *Poulis v. State Farm Fire and Cas. Co.*, 747 F.2d 863, 868 (3d Cir. 1984).

Emerson, 296 F.3d at 190.

In exercising this discretion, “there is no ‘magic formula’ that we apply to determine whether a District Court has abused its discretion in dismissing for failure to prosecute.” *Lopez v. Cousins*, 435 F. App’x 113, 116 (3d Cir. 2011) (quoting *Briscoe v. Klaus*, 538 F.3d 252 (3d Cir. 2008)). Therefore, “[i]n balancing the *Poulis* factors, [courts] do not [employ] a . . . ‘mechanical calculation’ to determine whether a District Court abused its discretion in dismissing a plaintiff’s case.” *Briscoe*, 538 F.3d at 263 (quoting *Mindek v. Rigatti*, 964 F.2d 1369, 1373 (3d Cir.1992)). Consistent with this view, it is well-settled that “no single *Poulis* factor is dispositive,” and that “not all of the *Poulis* factors need be satisfied in order to dismiss a complaint.” *Briscoe*, 538 F.3d at 263 (internal citations and quotations omitted). Moreover, recognizing the broad discretion conferred upon the district court in making judgments weighing these six factors, the court of appeals has frequently sustained such dismissal orders where there has been a pattern of dilatory conduct by a *pro se* litigant who is not amenable to any lesser sanction. *See, e.g.*, *Emerson*, 296 F.3d 184; *Tillio v. Mendelsohn*, 256 F. App’x 509 (3d Cir. 2007); *Reshard v. Lankenau Hospital*, 256 F. App’x 506 (3d Cir. 2007); *Azubuko v. Bell National Organization*, 243 F. App’x 728 (3d Cir. 2007).

As an initial matter, I note that “[w]hen a litigant’s conduct makes adjudication of the case impossible . . . such balancing under *Poulis* is unnecessary.” *Jones v. New Jersey Bar Ass’n*, 242 F. App’x 793 (3d Cir. 2007) (affirming a District Court’s dismissal of a *pro se* complaint due to plaintiff’s failure to amend without a *Poulis* analysis because plaintiff’s conduct made adjudication on the merits impossible). This principle has also been applied in cases in which a litigant refuses to pay the filing fee or seek leave to proceed *in forma pauperis*. See e.g., *Y’Hudibey v. City of New Castle*, No. 2:20-CV-1232, 2020 WL 6899804 at *2 (W.D. Pa. Nov. 24, 2020).

Plaintiff’s unwillingness to pay the correct filing fee or seek leave to proceed *in forma pauperis* in this case makes adjudication of this case on its merits impossible. *Johnson v. Nutter*, No. 15-423, 2016 WL 7217642 at *3 (E.D. Pa. Dec. 12, 2016) (noting that a court should not assess the merits of a complaint before evaluating a litigant’s financial status). As such, the court is within its discretion to dismiss this case without consideration of the *Poulis* factors.

However, even if this court were to evaluate those factors, they clearly weigh in favor of dismissal. First, Plaintiff is clearly responsible for his continued failure to either pay the correct filing fee or submit an appropriate required to proceed *in forma pauperis*. Plaintiff has been instructed on two occasions as to the amount of the appropriate filing fee, has been instructed that he should either pay that fee or

seek leave to proceed *in forma pauperis*, and has been advised that partial payments will not be accepted. (See Docs. 2, 5). Although I find the second and third factors (prejudice to Defendants and history of dilatoriness) do not weigh in favor of dismissal, the fourth factor (whether Plaintiff's conduct is willful) weighs heavily in favor of dismissal. "Willfulness involves intentional or self-serving behavior." *Adams v. Trustees of New Jersey Brewery Employees' Pension Tr. Fund*, 29 F.3d 863, 875 (3d Cir. 1994). Plaintiff's conduct of consistently disregarding and challenging the court's directives to pay the appropriate filing fee amount to willfulness. *See Arsad v. Gerula*, 366 F. App'x 323, 324 (reasoning in a decision affirming a District Court's dismissal due to failure to prosecute that the plaintiff's failure to pay the filing fee "amount[ed] to a willful failure to respond to the orders issued by the District Court, and 'evidences an intent to flout the District Court's instructions' on proper compliance with the provisions of 28 U.S.C. § 1915."). The fifth factor (effectiveness of other sanctions) also weighs in favor of dismissal. Given Plaintiff's unwillingness to pay the filing fee, the imposition of further monetary sanctions would be ineffective. Finally, as discussed above, the sixth factor (meritoriousness of Plaintiff's arbitration act claim) is not applicable to my analysis due to the procedural posture of this case. *See Johnson*, 2016 WL 7217642 at *3 (finding sixth *Poulis* factor inapplicable when a *pro se* prisoner refused to consent

to have the filing fee deducted from his prisoner account in installments). As explained in *Johnson*,

This factor is not applicable. The District court must first “[evaluate] a litigant’s financial status and whether (s)he is eligible to proceed *in forma pauperis* under § 1915(a)” before assessing the merits of the complaint. *Semulka*, 373 Fed.Appx. at 140 (quoting *Roman v. Jeffes*, 904 F.2d 192, 194 n.1 (3d Cir. 1990)). The merits of the complaint may not be a factor in assessing IFP status. *See Crawford v. Frimel*, 197 Fed.Appx. 144, 147 (3d Cir. 2006) (IFP cannot be denied for reasons other than financial ineligibility); *Sinwell v. Shapp*, 536 F.2d 15, 19 (3d Cir. 1976) (district court’s decision whether to grant IFP is based solely on the economic eligibility of the petitioner). Because the court has not yet granted IFP, the complaint has not been filed and the merits of the complaint should not be considered.

Id. As explained in Section II.A. of this Report, there is also no merit to Plaintiff’s position that this case should be permitted to proceed as a miscellaneous case.

Based on the heavy weight accorded to *Poulis* factors 1, 4, and 5, I find that this case should be dismissed.

[The following page contains the Recommendation]

IV. RECOMMENDATION

Accordingly, it is RECOMMENDED that:

- (1) Plaintiff's Complaint (Doc. 1) be DISMISSED without prejudice pursuant to Rule 41 of the Federal Rules of Civil Procedure for the failure to pay the required filing fee or seek leave to proceed *in forma pauperis*.
- (2) Plaintiff's Motion to Confirm Common Law Arbitration Award (Doc. 6) be DENIED as MOOT.
- (2) The Clerk of Court be DIRECTED to CLOSE this case.

Date: March 23, 2021

BY THE COURT

s/William I. Arbuckle
William I. Arbuckle
U.S. Magistrate Judge

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA

PAUL A. PIECZYNSKI,) CIVIL ACTION NO. 3:20-CV-1502
Plaintiff)
) (MANNION, D.J.)
v.)
) (ARBUCKLE, M.J.)
COMMONWEALTH OF)
PENNSYLVANIA, *et al.*,)
Defendants)

NOTICE OF LOCAL RULE 72.3

NOTICE IS HEREBY GIVEN that any party may obtain a review of the Report and Recommendation pursuant to Local Rule 72.3, which provides:

Any party may object to a magistrate judge's proposed findings, recommendations or report addressing a motion or matter described in 28 U.S.C. § 636 (b)(1)(B) or making a recommendation for the disposition of a prisoner case or a habeas corpus petition within fourteen (14) days after being served with a copy thereof. Such party shall file with the clerk of court, and serve on the magistrate judge and all parties, written objections which shall specifically identify the portions of the proposed findings, recommendations or report to which objection is made and the basis for such objections. The briefing requirements set forth in Local Rule 72.2 shall apply. A judge shall make a *de novo* determination of those portions of the report or specified proposed findings or recommendations to which objection is made and may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge. The judge, however, need conduct a new hearing only in his or her discretion or where required by law, and may consider the record developed before the magistrate judge, making his or her own determination on the basis of that record. The judge may also receive further evidence, recall witnesses, or recommit the matter to the magistrate judge with instructions.

Date: March 23, 2021

BY THE COURT

s/William I. Arbuckle
William I. Arbuckle
U.S. Magistrate Judge

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 21-1960

PAUL E. PIECZYNSKI,
Appellant

v.

COMMONWEALTH OF PENNSYLVANIA; STEFANIE J. SALAVANTIS, Acting
District Attorney; MICHAEL T. VOUGH, Acting Judge; DAVID W. LUPAS

On Appeal from the United States District Court
for the Middle District of Pennsylvania
(D.C. Civ. Action No. 3-20-cv-01502)
District Judge: Honorable Malachy E. Mannion

SUR PETITION FOR REHEARING

Present: CHAGARES, *Chief Judge*, McKEE, AMBRO, JORDAN, HARDIMAN,
GREENAWAY, JR., SHWARTZ, KRAUSE, RESTREPO, BIBAS, PORTER, MATEY,
PHIPPS and NYGAARD*, *Circuit Judges*.

The petition for rehearing filed by Appellant in the above-entitled case having
been submitted to the judges who participated in the decision of this Court and to all the
other available circuit judges of the circuit in regular active service, and no judge who
concurred in the decision having asked for rehearing, and a majority of the judges of the

* Judge Nygaard's vote is limited to panel rehearing only.

APPENDIX F

circuit in regular service not having voted for rehearing, the petition for rehearing by the panel and the Court en banc is denied.

BY THE COURT,

s/Joseph A. Greenaway, Jr.
Circuit Judge

Dated: January 4, 2022
CJG/cc: Paul E. Pieczynski