

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

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J.C. Nos. 03-21-90066, 03-21-90067, 03-21-90068, 03-21-90069,  
03-21-90079, 03-21-90080, 03-21-90081, 03-21-90082

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IN RE: COMPLAINTS 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: January 19, 2022)

PRESENT: CHAGARES, Chief Judge.

These complaints are filed under the Judicial Conduct and Disability Act, 28 U.S.C. §§ 351-64, against a United States District Judge (“Subject Judge I”) and six United States Circuit Judges (“Subject Judge II” through “Subject Judge VII”). For the reasons discussed below, the complaints 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, a frequent pro se litigant, filed two civil matters that were assigned to Subject Judge I. In the first civil action, Complainant raised allegations concerning a dispute in state court. Subject Judge I dismissed the complaint for failure to state a claim and, in light of Complainant's history of repetitive litigation, cautioned him that future filing of duplicative lawsuits raising the same claims could result in restrictions on his filing privileges. Complainant appealed. A panel comprised of Subject Judges II, III, and IV dismissed the appeal as untimely.

The second civil action raised similar allegations concerning the state court dispute. Subject Judge I dismissed the complaint and issued an order to show cause why Complainant should not be subject to a pre-filing injunction prohibiting filing new lawsuits about the same subject matter. Subject Judge I subsequently issued a pre-filing injunction. Complainant appealed. A panel comprised of Subject Judges V, VI, and VII dismissed the appeal as untimely.

Complainant has filed two complaints of judicial misconduct. In the first, Complainant recounts many of the allegations underlying his civil complaints<sup>1</sup> and alleges that Subject Judge I "has joined in on the conspiracy against [him] along with everyone else." In the second, Complainant alleges that the dismissal of his cases demonstrates

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<sup>1</sup> Many of Complainant's underlying allegations concern misconduct on the part of a state employee. Such an individual is not a federal judge and therefore is not subject to the Judicial Conduct and Disability Act. See 28 U.S.C. § 351(d); Rule 4, Rules for Judicial-Conduct and Judicial-Disability Proceedings. Accordingly, Complainant's allegations of misconduct on the part of the state employee will not be addressed in this opinion. See 28 U.S.C. §§ 351, 352(b)(1)(A)(i).

“bias . . . [or] perhaps a conspiracy against [him].” Complainant requests corrective action in light of his advanced age and poor health.

To the extent Complainant’s allegations reflect his disagreement with the Subject Judges’ rulings in Complainant’s civil cases and appeals, the allegations are merits related. Merits-related allegations do not constitute cognizable misconduct. 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.”). “The misconduct procedure [under the Judicial Conduct and Disability Act] is not designed as 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). Complainant’s merits-related allegations are therefore 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.

Complainant’s non-merits-related allegations of judicial misconduct are groundless. A review of the record does not reveal a basis for concluding that any of the seven Subject Judges is biased against Complainant or has participated in a conspiracy against him. Such allegations are therefore 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.

Finally, it is noted that, within less than one month, Complainant filed two separate misconduct complaints naming seven different Subject Judges. As discussed herein, both complaints are merits-related, unsubstantiated, and frivolous. While the Court is sympathetic that Complainant is in poor health, Complainant is cautioned pursuant to Rule 10 of the Rules for Judicial-Conduct and Judicial-Disability Proceedings that, in the future, filing additional repetitive, harassing, or frivolous complaints may constitute abuse of the judicial misconduct complaint procedure and may result in the imposition of restrictions pursuant to this provision.<sup>2</sup>

Based on the foregoing, these complaints will be dismissed pursuant to 28 U.S.C. § 352(b)(1)(A)(ii), (iii).

s/ Michael A. Chagares  
Chief Judge

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<sup>2</sup> Rule 10(a) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings provides:

A complainant who has filed repetitive, harassing, or frivolous complaints, or has otherwise abused the complaint procedure, may be restricted from filing further complaints. After giving the complainant an opportunity to show cause in writing why his or her right to file further complaints should not be limited, the judicial council may prohibit, restrict, or impose conditions on the complainant's use of the complaint procedure. Upon written request of the complainant, the judicial council may revise or withdraw any prohibition, restriction, or condition previously imposed.

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ORDER

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(Filed: January 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 complaints brought pursuant to 28 U.S.C. § 351 are hereby dismissed under 28 U.S.C. § 352(b)(1)(A)(ii), (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: January 19, 2022