

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. No. 03-22-90003

IN RE: COMPLAINT OF JUDICIAL MISCONDUCT
OR DISABILITY

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

MEMORANDUM OPINION

(Filed: March 28, 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, a frequent pro se litigant, is a plaintiff in a civil rights action that was assigned to the Subject Judge. The Subject Judge dismissed the complaint for failure to state a claim but, on appeal, the Court of Appeals vacated the judgment and remanded it to

the District Court. The matter was reopened and the Subject Judge issued an order permitting one of Complainant's claims to proceed and dismissing the remainder. That claim remains pending.

In this complaint of judicial misconduct, Complainant recounts the factual basis for his civil rights action and states that he "raised claims." Complainant alleges that the Subject Judge is "delusional, confuse[d,] disjointed and showing a bias towards me[]or maybe trying to shield[] the defendant" in violation of Complainant's constitutional rights. Complainant further contends that the Subject Judge is "trying to give [the defendants in his civil rights action] immunity" and is "joining into this conspiracy."

To the extent Complainant's allegations reflect his disagreement with the Subject Judges' rulings in Complainant's civil rights action, 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."). Such allegations are 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, including bias, confusion, and conspiracy, are entirely groundless. The record does not reveal any basis whatsoever to support a conclusion that the Subject Judge has engaged in judicial misconduct or suffers from a disability. 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.

Complainant previously filed two misconduct complaints naming seven different Subject Judges, including the Subject Judge of this complaint. See J.C. Nos. 03-21-90067–69, 03-21-90079–82. The prior complaints were dismissed as merits-related, unsubstantiated, and frivolous. Shortly before issuance of the opinion resolving those complaints, Complainant filed the above-captioned complaint, which is also merits-related, unsubstantiated, and frivolous. Complainant is therefore strongly cautioned pursuant to Rule 10 of the Rules for Judicial-Conduct and Judicial-Disability Proceedings that continued filing of repetitive, harassing, or frivolous complaints may result in the imposition of restrictions pursuant to this provision.¹ Based on the foregoing, this complaint will be dismissed pursuant to 28 U.S.C. § 352(b)(1)(A)(iii).

s/ Michael A. Chagares
Chief Judge

¹ 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

(Filed: March 28, 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.

s/ Michael A. Chagares
Chief Judge

Dated: March 28, 2022