

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. Nos. 03-22-90063 and 03-22-90064

IN RE: COMPLAINT OF JUDICIAL MISCONDUCT
OR DISABILITY

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

MEMORANDUM OPINION

(Filed: October 14, 2022,)

PRESENT: CHAGARES, Chief Judge.

The present complaints were filed under the Judicial Conduct and Disability Act, 28 U.S.C. §§ 351-64, against a United States District Judge (“Subject Judge”) by two individuals who are plaintiffs in a civil suit pending before the Subject Judge. 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).

Complainants allege that the Subject Judge is part of a “coordinated effort” and conspiracy against them because of the Subject Judge’s entry of a prefiling injunction

order against them. Complainants complain that the Subject Judge has prevented motions from being docketed.¹ They also allege that he has used his judicial position to harass and retaliate against them and “sabotage” their rights. Complainants further contend that the Subject Judge has an “improper motive” for ruling against them.

To the extent Complainants seek to collaterally attack the Subject Judge’s decisions in their civil suit, it is evident that their allegations are not cognizable under the Judicial Conduct and Disability Act. Such allegations are merits related and 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.”). 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.”) Complainants’ 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.

¹ Complainants also make allegations concerning a state court judge, a U.S. Attorney, and defendants in their civil suit. These allegations cannot be addressed in these proceedings because the Judicial Conduct and Disability Act only applies to covered federal judges. 28 U.S.C. § 352(b)(1)(A)(i); Rule 1, Rules for Judicial-Conduct and Judicial-Disability Proceedings.

Complainants' allegations of harassment and the existence of an improper motive are likewise subject to dismissal. Complainants provide no support for their allegations of judicial misconduct other than their disagreement with a prefiling injunction order entered by the Subject Judge. I express no opinion as to the merits of Complainants' civil suit but note that the prefiling injunction was entered after Complainants were given notice and an opportunity to oppose the order. Complainants have litigated unsuccessfully the same claims for more than a decade in various lawsuits filed in federal and state courts. There is no evidence of judicial misconduct. Accordingly, Complainants' allegations of judicial misconduct are dismissed as unsupported by any evidence that would raise an inference that judicial misconduct has occurred. 28 U.S.C. § 352(b)(1)(A)(iii); Rule 11(c)(1)(D), Rules for Judicial-Conduct and Judicial-Disability Proceedings.

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

s/ Michael A. Chagares
Chief Judge

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ORDER

(Filed: October 14, 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)(i), (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: October 14, 2022