

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. Nos. 03-22-90029 and 03-22-90030

IN RE: COMPLAINTS OF JUDICIAL MISCONDUCT
OR DISABILITY

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

MEMORANDUM OPINION

(Filed: June 28, 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”). 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 have been involved in a contentious estate dispute for many years and have sought relief in several courts. As relevant here, Complainants filed a pro se civil rights complaint that was assigned to the Subject Judge. The Subject Judge granted

the defendants' motion for a pre-filing injunction order limiting Complainants' ability to file documents and new proceedings without permission of the Court. Complainants have sought reconsideration and the Subject Judge's recusal. The motions remain pending.

In these two complaints of judicial misconduct, Complainants allege that the Subject Judge has "joined" the defendants and others in a "coordinated effort to retaliate and deprive [Complainants] of rights secured by the U.S. Constitution" by entering the pre-filing injunction.¹ Complainants further claim that the Subject Judge has "blocked" their recusal motion and request for reconsideration, although both motions appear to be pending. Complainants allege that the Subject Judge's actions constitute harassment and retaliation and request the Subject Judge's removal from the case.

The complaints are clearly intended to challenge the Subject Judge's rulings, including the anti-filing injunction order. Such allegations are merits related and do not constitute cognizable misconduct.² 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."). Merits-related allegations are subject to dismissal. See 28 U.S.C. § 352(b)(1)(A)(ii); Rules

¹ Individuals who are not federal judges are not subject to the Judicial Conduct and Disability Act. See 28 U.S.C. § 351(d); Rule 1(b), Rules for Judicial-Conduct and Judicial-Disability Proceedings. Allegations of misconduct concerning such individuals therefore will not be addressed in this opinion. See 28 U.S.C. §§ 351, 352(b)(1)(A)(i).

² Although Complainants request recusal in this administrative proceeding, as previously noted, a recusal motion is currently pending before the Subject Judge. A substantive decision rendered on a recusal motion is merits-related and non-cognizable. See Rule 4(b)(1), Rules for Judicial-Conduct and Judicial-Disability Proceedings.

4(b)(1), 11(c)(1)(B), Rules for Judicial-Conduct and Judicial-Disability Proceedings.

“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).

Complainants’ remaining allegations are unsubstantiated. The record does not support a conclusion that the Subject Judge harassed, conspired, or retaliated against them. Accordingly, all such allegations are 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.

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: June 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 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: June 28, 2022