

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. No. 03-22-90075

IN RE: COMPLAINT OF JUDICIAL MISCONDUCT
OR DISABILITY

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

MEMORANDUM OPINION

(Filed: October 20, 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 was indicted for possession and production of child pornography. The matter was assigned to the Subject Judge. After a trial, a jury found Complainant

guilty of four counts. The Subject Judge imposed a lengthy term of imprisonment. Complainant appealed, and the Court of Appeals affirmed in all respects.

Complainant then filed a motion under 28 U.S.C. § 2255 to vacate, set aside, or correct his sentence. That matter also was assigned to the Subject Judge, who denied the motion as well as a subsequent motion for reconsideration. Complainant unsuccessfully appealed the § 2255 denial. Most recently, Complainant filed a petition for a writ of mandamus, which is pending before the Court of Appeals.

Complainant alleges in this complaint of judicial misconduct that he “should not have been found guilty” in the criminal proceeding before the Subject Judge. Complainant contends that the Subject Judge will not answer an important question relevant to his conviction. Complainant alleges that the failure during trial to address this important question and to produce adequate evidence gives rise to reasonable doubt of his guilt. Complainant states that he intends “to provide [his] innocence and to show misconduct.”

Complainant’s allegations are clearly intended to collaterally challenge his criminal conviction. This is a merits-related dispute and therefore does 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.”). Complainant has unsuccessfully pursued various avenues relief from his conviction, including a direct appeal, a motion under § 2255, and a Rule 60 motion. This administrative proceeding

does not yield an alternative forum in which to seek review of the merits of the criminal conviction. “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 subject to dismissal. See 28 U.S.C. § 352(b)(1)(A)(ii); Rule 4(b)(1), 11(c)(1)(B), Rules for Judicial-Conduct and Judicial-Disability Proceedings.

To the extent the complaint presents non-merits-related allegations, they lack substantiation. The record reveals no basis for a finding of judicial misconduct on the part of the Subject Judge. Any remaining allegations are therefore subject to dismissal as 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)(D), Rules for Judicial-Conduct and Judicial-Disability Proceedings.

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

s/ Michael A. Chagares
Chief Judge

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ORDER

(Filed: October 20, 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: October 20, 2022