

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

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J.C. No. 03-22-90089

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IN RE: COMPLAINT 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: February 1, 2023)

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 prisoner, was a pro se plaintiff in two civil cases before the Subject Judge. In the first proceeding, the Subject Judge granted summary judgment to the defendant and closed the case. Complainant did not appeal. In the second proceeding, the

Subject Judge initially granted summary judgment to the defendant but later vacated that order and reopened the case. Complainant appealed. The appeal has been listed for possible dismissal due to a jurisdictional defect. Both the appeal and the underlying case remain pending.

Complainant alleges in this complaint of judicial misconduct that, in the first case, defense counsel sent correspondence to the Subject Judge's chambers in violation of an order advising that all case information must be directed the Clerk of the District Court. Defense counsel copied Complainant on the correspondence, which advises the Subject Judge of defense counsel's unsuccessful effort to identify and serve process on an individual named in the complaint. Complainant acknowledges it is "unclear" whether the Subject Judge corresponded with defense counsel in return. Complainant nonetheless contends that the exchange "may have shown favoritism to the opposing party and prejudiced [Complainant's] civil matters."

In regard to the second case, Complainant alleges that he never received service of the defendant's motion for summary judgment and therefore was not able to respond to it. Complainant alleges that the Subject Judge failed to "give notice of [Complainant's non-response to said motion]" before entering summary judgment against him. Complainant claims that this action reflects "retaliation and simple interference."

Complainant's allegations challenge official actions by the Subject Judge, including the decision to enter summary judgment in the absence of an opposition. These are merits-related disputes that 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); 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 of bias and retaliation, the claims are baseless. The decision by defense counsel to send a letter directly to the Subject Judge to advise of procedural difficulties does not reasonably substantiate a claim of favoritism on the part of the Subject Judge. The Subject Judge vacated the decision to enter summary judgment against Complainant in the second proceeding in order to permit Complainant to respond, undermining any claim of retaliation. The record thus reveals no basis for a finding of judicial misconduct on the part of the Subject Judge. Complainant’s remaining allegations are 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

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(Filed: February 1, 2023)

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](http://www.ca3.uscourts.gov).

s/ Michael A. Chagares  
Chief Judge

Dated: February 1, 2023

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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 prisoner, was a pro se plaintiff in two civil cases before the Subject Judge. In the first proceeding, the Subject Judge granted summary judgment to the defendant and closed the case. Complainant did not appeal. In the second proceeding, the

Subject Judge initially granted summary judgment to the defendant but later vacated that order and reopened the case. Complainant appealed. The appeal has been listed for possible dismissal due to a jurisdictional defect. Both the appeal and the underlying case remain pending.

Complainant alleges in this complaint of judicial misconduct that, in the first case, defense counsel sent correspondence to the Subject Judge's chambers in violation of an order advising that all case information must be directed the Clerk of the District Court. Defense counsel copied Complainant on the correspondence, which advises the Subject Judge of defense counsel's unsuccessful effort to identify and serve process on an individual named in the complaint. Complainant acknowledges it is "unclear" whether the Subject Judge corresponded with defense counsel in return. Complainant nonetheless contends that the exchange "may have shown favoritism to the opposing party and prejudiced [Complainant's] civil matters."

In regard to the second case, Complainant alleges that he never received service of the defendant's motion for summary judgment and therefore was not able to respond to it. Complainant alleges that the Subject Judge failed to "give notice of [Complainant's non-response to said motion]" before entering summary judgment against him. Complainant claims that this action reflects "retaliation and simple interference."

Complainant's allegations challenge official actions by the Subject Judge, including the decision to enter summary judgment in the absence of an opposition. These are merits-related disputes that do not constitute cognizable misconduct. Rule 4(b)(1),



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To the extent the complaint presents non-merits-related allegations of bias and retaliation, the claims are baseless. The decision by defense counsel to send a letter directly to the Subject Judge to advise of procedural difficulties does not reasonably substantiate a claim of favoritism on the part of the Subject Judge. The Subject Judge vacated the decision to enter summary judgment against Complainant in the second proceeding in order to permit Complainant to respond, undermining any claim of retaliation. The record thus reveals no basis for a finding of judicial misconduct on the part of the Subject Judge. Complainant’s remaining allegations are 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.  
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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:

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