

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. Nos. 03-22-90095, 03-22-90100

IN RE: COMPLAINT OF JUDICIAL MISCONDUCT
OR DISABILITY

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

MEMORANDUM OPINION

(Filed: February 7, 2023)

PRESENT: CHAGARES, Chief Judge.

These complaints are filed under the Judicial Conduct and Disability Act, 28 U.S.C. §§ 351-64, against two United States District Judges (“Subject Judge I” and “Subject Judge II”). 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).

Complainant is a frequent pro se litigant. He filed a pro se complaint in 2020 that was assigned to Subject Judge I. Subject Judge I dismissed the complaint with prejudice, observing, among other things, that Complainant had previously filed eight proceedings

concerning the same subject matter and was engaged in malicious abuse of process.

Subject Judge I later issued an injunction to prohibit Complainant from filing additional cases based on the same subject matter. Complainant appealed, but the appeal was dismissed as untimely filed.

Complainant filed another pro se complaint in 2022 concerning unrelated subject matter, which was assigned to Subject Judge II. Subject Judge II dismissed that complaint for lack of subject matter jurisdiction and closed the case. Complainant did not appeal.

Complainant has filed complaints of judicial misconduct against Subject Judges I and II, respectively. Complainant alleges in the first complaint that Subject Judge I's anti-filing injunction order reflects bias and violates Complainant's rights under the First Amendment.¹ Complainant's allegations in the second complaint are less clear but appear to take issue with an order by Subject Judge II concerning case management and service of process.

Complainant's allegations primarily challenge the merits of judicial rulings by Subject Judges I and II and therefore are merits related. Merits-related allegations do not constitute cognizable misconduct. Rule 4(b)(1), Rules for Judicial-Conduct and Judicial-Disability Proceedings. Such allegations are subject to dismissal. See 28 U.S.C.

¹ Complainant also presents allegations of misconduct on the part of an attorney who is not a federal judge and therefore is not covered by the Judicial Conduct and Disability Act. See 28 U.S.C. §§ 351, 352(b)(1)(A)(i); Rule 1, Rules for Judicial-Conduct and Judicial-Disability Proceedings. Such allegations are not cognizable in this proceeding and will not be addressed in this opinion.

§ 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 allegation of bias on the part of Subject Judge I lacks evidentiary support. The record does not substantiate the allegation. The claim is 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 has filed numerous misconduct complaints in the past. See J.C. Nos. 03-20-90084, 03-21-90066, 03-21-90067, 03-21-90068, 03-21-90069, 03-21-90079, 03-21-90080, 03-21-90081, 03-21-90082, 03-22-90003, 03-22-90021, 03-22-90024, 03-22-90028, and 03-22-90040. The prior complaints were dismissed as merits-related, unsubstantiated, and frivolous. Complainant was strongly cautioned that continued filing of repetitive, harassing, or frivolous misconduct complaints could result in the imposition of restrictions pursuant to Rule 10 of the Rules for Judicial-Conduct and Judicial-Disability Proceedings.² See J.C. No. 03-22-90003. Complainant nonetheless filed

² 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.

additional frivolous, unsupported, and non-cognizable complaints. See J.C. Nos. 03-22-90021, 03-22-90024, 03-22-90028, and 03-22-90040.

Because it appeared Complainant was engaged in abuse of the complaint procedure, the Judicial Council issued an order on December 9, 2022, directing Complainant to show cause why he should not be enjoined Rule 10, Rules for Judicial-Conduct and Judicial-Disability Proceedings, from filing further complaints under the Judicial Conduct and Disability Act. An injunction was issued on February 6, 2023.

Complainant filed the two current complaints prior to the Judicial Council's issuance of the show cause order and injunction. The complaints were therefore accepted for filing and are being addressed on their merits. Complainant is reminded, however, that the Judicial Council's order of February 6, 2023 remains in effect. Complainant continues to be enjoined under Rule 10(a), Rules for Judicial-Conduct and Judicial-Disability Proceedings, from filing further complaints of judicial misconduct or disability under the Judicial Conduct and Disability Act in this Circuit.

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

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. Nos. 03-22-90095, 03-22-90100

IN RE: COMPLAINT OF JUDICIAL MISCONDUCT
OR DISABILITY

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

ORDER

(Filed: February 7, 2023)

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: February 7, 2023