

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. No. 03-23-90006

IN RE: COMPLAINT OF JUDICIAL MISCONDUCT
OR DISABILITY

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

MEMORANDUM OPINION

(Filed: April 12, 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 complains that the Subject Judge dismissed her civil suit without a trial, did not grant her leave to amend her complaint, failed to recuse, failed to hold a pretrial conference, and did not grant her discovery, among other allegations.

Complainant seeks to collaterally attack the Subject Judge’s decisions. Merits related allegations, however, are not cognizable under the Judicial Conduct and Disability Act. 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 28 U.S.C. § 352(b)(1)(A)(ii); Rule 11(c)(1)(B), Rules for Judicial-Conduct and Judicial-Disability Proceedings. Accordingly, these allegations are subject to dismissal.

To the extent Complainant alleges that the Subject Judge had an improper motive for any decisions, her allegations are likewise 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. The underlying case record has been reviewed and there is no evidence of an improper motive or other judicial misconduct. Nor is there any evidence of an improper conspiracy or ex parte communication with the clerk of court. Notably, a panel of Third Circuit judges previously denied a mandamus petition filed by Complainant seeking the Subject Judge’s recusal and another panel affirmed the District Court’s award of summary judgment. Complainant’s remaining allegations are dismissed. Id.¹

Finally, this is Complainant’s fourth complaint against the same Subject Judge. See J.C. Nos. 03-20-90005, 03-22-90014, 03-22-90073. Complainant was previously

¹ To the extent Complainant seeks to file a complaint against the clerk, her allegations cannot be addressed in these proceedings because the Judicial Conduct and Disability Act only applies to federal judges. Rule 1, Rules for Judicial-Conduct and Judicial-Disability Proceedings.

cautioned that the continued filing of repetitive, harassing, or frivolous complaints might 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. 03-22-90073. Nonetheless, Complainant proceeded to file the present complaint and makes additional frivolous and merits-related allegations. Accordingly, a copy of this opinion will be transmitted to the Judicial Council for consideration of the issuance of an order to show cause why Complainant should not be restricted from filing further complaints pursuant to Rule 10(a).

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

s/ Michael A. Chagares
Chief Judge

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.

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ORDER

(Filed: April 12, 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)(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: April 12, 2023