

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

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J.C. No. 03-23-90007

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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: April 18, 2023)

PRESENT: CHAGARES, Chief Judge.<sup>1</sup>

This complaint is filed under the Judicial Conduct and Disability Act, 28 U.S.C. §§ 351-64, against a United States Circuit 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

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<sup>1</sup> A prior vote of the Judicial Council authorized my consideration of the present complaint pursuant to Rule 25, Rules for Judicial-Conduct and Judicial-Disability Proceedings. During the same vote, the Judicial Council voted to issue an order to show cause under Rule 10 in view of Complainant’s frivolous and merits-related complaints. See J.C. Nos. 03-22-90103 through 03-22-90111. The present complaint was filed prior to the issuance of that order.

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 about the Subject Judge’s dismissal of a prior complaint of judicial misconduct naming multiple judges.<sup>2</sup> 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. As stated in the Commentary on Rule 4:

Any allegation that calls into question the correctness of an official decision or procedural ruling of a judge – without more – is merits-related. The phrase “decision or procedural ruling” is not limited to rulings issued in deciding Article III cases or controversies. Thus, a complaint challenging the correctness of a chief judge’s determination to dismiss a prior misconduct complaint would be properly dismissed as merits-related . . . .

Accordingly, these allegations concerning the Subject Judge’s decision dismissing a prior complaint of judicial misconduct are subject to dismissal.<sup>3</sup>

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<sup>2</sup> The Subject Judge was acting pursuant to Rule 25(f), Rules for Judicial-Conduct and Judicial-Disability Proceedings (when chief judge is disqualified his or her duties must be assigned to the most-senior active circuit judge not disqualified).

<sup>3</sup> In addition, to the extent Complainant seeks to collaterally attack the denial of his application for a certificate of appealability, Complainant’s allegations are likewise not cognizable. In any event, the Subject Judge was not on the panel that denied his application.

To the extent Complainant alleges that the Subject Judge had an improper motive for any decisions or is part of a conspiracy, the 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. Complainant's only support for his allegations is his disagreement with the Subject Judge's decision and the underlying decision in his Third Circuit appeal.

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

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ORDER

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(Filed: April 18, 2023)

PRESENT: CHAGARES, Chief Judge.<sup>1</sup>

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:

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<sup>1</sup> A prior vote of the Judicial Council authorized my consideration of the present complaint pursuant to Rule 25, Rules for Judicial-Conduct and Judicial-Disability Proceedings. During the same vote, the Judicial Council voted to issue an order to show cause under Rule 10 in view of Complainant's frivolous and merits-related complaints. See J.C. Nos. 03-22-90103 through 03-22-90111. The present complaint was filed prior to the issuance of that order.

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: April 18, 2023