

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. Nos. 03-23-90008 and 03-23-90009

IN RE: COMPLAINT OF JUDICIAL MISCONDUCT
OR DISABILITY

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

MEMORANDUM OPINION

(Filed: April 21, 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 Magistrate Judge (“Subject Judge I”) and a United States District Judge (“Subject Judge II”). For the reasons discussed below, the complaint will be dismissed.¹

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).

¹ Complainant also filed multiple sworn supplements to his complaint, and these have all been reviewed.

Complainant, a pro se prisoner, complains that Subject Judge I denied a video status conference and “passed the buck” to the Court of Appeals to “deal” with his habeas petition. Complainant also complains about Subject I’s denial of a motion, Subject Judge I’s refusal to recuse himself, and Subject Judge I’s Report and Recommendation. Complainant further complains about Subject Judge II’s authority to adopt the Report and Recommendation in view of Complainant’s filing of a motion to transfer. Complainant views the Subject Judges’ decisions as evidence of bias, conspiracy, fraud, and collusion.

Complainant plainly seeks to collaterally attack the Subject Judges’ decisions in the present administrative proceedings. 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. Thus, these allegations are subject to dismissal.

To the extent Complainant alleges that the Subject Judges are biased and have engaged in other misconduct such as fraud and collusion, his allegations are likewise subject to dismissal. Complainant’s only support for his allegations is his disagreement with the Subject Judges’ decisions in his habeas proceeding and as discussed above, merits-related allegations are not cognizable misconduct under the Act. Furthermore, the underlying case record has been reviewed and there is no evidence of judicial misconduct.

Indeed, a panel of Court of Appeals judges denied Complainant's application for a certificate of appealability, concluding that:

Reasonable jurists would agree that Appellant has failed to set forth a viable claim related to his convictions, and that any parole-related claims are unexhausted. Appellant's requests for appointment of counsel are denied, see 18 U.S.C. § 3006A(a)(2), as are his requests to remand this case to a different district judge, see Securacomm Consulting, Inc. v. Securacom Inc., 224 F.3d 273, 278 (3d Cir. 2000) ("We have repeatedly stated that a party's displeasure with legal rulings does not form an adequate basis for recusal").

Accordingly, Complainant's remaining allegations are dismissed 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.²

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

s/ Michael A. Chagares
Chief Judge

² Complainant also complains about docket entries made by the District Court Clerk's Office. These allegations about Clerk's Office employees cannot be addressed in these proceedings because only federal judges are subject to the Judicial Conduct and Disability Act. Rule 1, Rules for Judicial-Conduct and Judicial-Disability Proceedings; 28 U.S.C. § 352(b)(1)(A)(i).

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ORDER

(Filed: April 21, 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 21, 2023