

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. Nos. 03-23-90034, 03-23-90035

IN RE: COMPLAINT OF JUDICIAL MISCONDUCT
OR DISABILITY

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

MEMORANDUM OPINION

(Filed: August 8, 2023)

PRESENT: CHAGARES, Chief Judge.

This complaint is 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 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 is a frequent pro se filer who has had many suits dismissed as frivolous. The Subject Judges have each, after notice and an opportunity to respond, separately issued injunction orders limiting Complainant’s ability to file additional

lawsuits. Complainant alleges that the Subject Judges “are keeping [C]omplainant away from all courts with actual malice, actual fraud and willful and intentional violations of the U.S. Constitution and State and Federal statutes.” Complainant further alleges that he is “not permitted to go upstairs in a Federal Building.”

To the extent Complainant is attempting to collaterally challenge the anti-filing injunctions, such allegations are merits related and 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). These merits-related allegations are subject to dismissal. See 28 U.S.C. § 352(b)(1)(A)(ii); Rules 4(b)(1), 11(c)(1)(B), Rules for Judicial-Conduct and Judicial-Disability Proceedings.

There is no support in the record for the remaining claims of judicial misconduct. Complainant has not provided evidence of malice, fraud, or other wrongdoing. It is not apparent that the Subject Judges issued the directive limiting Complainant’s ability to access federal buildings. Even assuming they did so, such a directive is not a basis for an inference that misconduct has occurred. Complainant has employed threatening and

abusive language in the course of his communications with this Court. Due to increasing threats and acts of violence against federal judges and their families, the Judicial Conference of the United States has identified judicial security as a key priority. Security measures are therefore warranted in appropriate circumstances. There is no indication that Complainant's building access has been limited for any improper purpose. Complainant's allegations of misconduct are thus unsubstantiated and will be 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.

Based on the foregoing, this complaint will be dismissed pursuant to 28 U.S.C. § 352(b)(1)(A)(ii) and (iii). Complainant filed a prior misconduct complaint against Subject Judge I that also was determined to be merits-related, unsubstantiated, and frivolous. See J.C. Nos. 03-22-90086. Complainant therefore is cautioned pursuant to Rule 10 of the Rules for Judicial-Conduct and Judicial-Disability Proceedings.¹ Continued filing of repetitive, harassing, or frivolous complaints may result in the imposition of restrictions pursuant to this provision.

¹ 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.

s/ Michael A. Chagares
Chief Judge

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ORDER

(Filed: August 8, 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.

s/ Michael A. Chagares
Chief Judge

Dated: August 8, 2023