

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. No. 03-23-90037

IN RE: COMPLAINT OF JUDICIAL MISCONDUCT
OR DISABILITY

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

MEMORANDUM OPINION

(Filed: August 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 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, a state prisoner, filed several pro se proceedings that were assigned to the Subject Judge. Among others, he filed a civil rights complaint claiming that he is being incarcerated beyond his maximum release date. The Subject Judge dismissed the

complaint, concluding that a petition for a writ of habeas corpus, not a civil rights action, is the proper vehicle for such a claim. Complainant appealed and the appeal remains pending. Complainant later filed two habeas petitions, which the Subject Judge considered together. The Subject Judge dismissed the petitions for lack of jurisdiction because Complainant was no longer in custody. Complainant also filed an action concerning alleged lack of access to legal materials. The Subject Judge dismissed that matter for failure to prosecute.

Complainant alleges in this complaint of judicial misconduct that the Subject Judge retaliated against him by failing to consider his proceedings separately and instead “combined them and or mixed them up,” causing Complainant to be “severely prejudiced as a result[.]” Complainant alleges that the Subject Judge’s actions reflect “an apparent ongoing violation – civil conspiracy designed to protect county employees and or officers and disguise/hide retaliation against petitioner.” He further alleges that “the actions of misconduct and or fraud on the court were taken as discriminatory actions due to petitioner’s race color creed etc.” Complainant states that an examination of the record will show that the “fraud disability and or misconduct [is] apparent.”¹

Complainant is attempting in part to collaterally challenge official judicial actions, including the Subject Judge’s interpretation of his court submissions, the decision to

¹ Complainant requests that he be sent copies of various court documents. Copy requests must be directed to the Clerk’s Office of the court in which the particular matter is pending. Complainant is advised that he need not provide copies of the court filings in support of this complaint of judicial misconduct. The record in each of the relevant proceedings is available and has been carefully reviewed.

consider certain matters together, and the dismissal of the civil rights complaint. These 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.”). Indeed, the judgment dismissing the civil action is currently before the Court of Appeals. “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). Complainant’s merits-related allegations are thus 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.

Complainant’s allegations of retaliation, conspiracy, and racial bias are lacking in factual support. The record has been examined and there is nothing to substantiate Complainant’s claim that the Subject Judge’s actions were taken for an improper motive or for the purpose of causing Complainant prejudice. Complainant’s allegations are therefore subject to dismissal as 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)(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).

s/ Michael A. Chagares
Chief Judge

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ORDER

(Filed: August 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)(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 21, 2023