

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. No. 03-23-90056

IN RE: COMPLAINT OF JUDICIAL MISCONDUCT
OR DISABILITY

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

MEMORANDUM OPINION

(Filed: September 18, 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”).¹ 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).

¹ Complainant also makes allegations regarding individuals who are not federal judges. These allegations cannot be addressed in the present proceedings because the Judicial Conduct and Disability Act only applies to federal judges. Rule 1, Rules for Judicial-Conduct and Judicial-Disability Proceedings.

Complainant pled guilty in a criminal proceeding before the Subject Judge. In the present complaint, Complainant alleges that the Subject Judge engaged in judicial misconduct because he participated in ex parte communications, an ex parte hearing, denied the appointment of new counsel, and denied Complainant the right to cross examine a witness, among other allegations. Complainant plainly seeks to collaterally attack the Subject Judge's decisions in a criminal matter 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. Accordingly, these allegations are subject to dismissal.

To the extent Complainant alleges that the Subject Judge had an improper motive for any decisions, his allegations are subject to dismissal. The underlying case record has been reviewed and there is no evidence of an improper motive or other judicial misconduct. Indeed, the record reflects that Complainant was appointed multiple attorneys and ultimately proceeded with stand by counsel. The Subject Judge held several hearings about the counsel issue. In addition, Complainant provides no evidence that improper ex parte communications occurred. With respect to a putative ex parte hearing about competency, the docket reflects that an expert report was issued, a status conference was held, counsel addressed the court, and the Subject Judge denied Complainant's pro se

motions and issued an opinion memorializing his decision.² Complainant's 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.

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 It appears that Complainant now seeks to file a direct appeal in the underlying criminal matter. I express no opinion as to the merits of any pending appeal in the present administrative proceeding.

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ORDER

(Filed: September 18, 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: September 18, 2023