

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. No. 03-23-90057

IN RE: COMPLAINT OF JUDICIAL MISCONDUCT
OR DISABILITY

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

MEMORANDUM OPINION

(Filed: September 15, 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 filed a pro se breach of contract action against a mortgage company and others in 2017. The matter was assigned to the Subject Judge, who ultimately transferred the matter to a District Court outside of this Circuit. The transferee court

dismissed the complaint, and Complainant did not appeal. That court subsequently issued an anti-filing injunction describing Complainant as a “vexatious litigant” and limiting Complainant’s ability to file new suits concerning the same subject matter without court leave.

Five years later, in 2022, Complainant filed another pro se breach of contract complaint against the mortgage company, which was assigned to the Subject Judge. The Subject Judge issued an order directing Complainant to show cause why the matter should not be dismissed in accordance with the anti-filing injunction. After considering Complainant’s response, the Subject Judge dismissed the complaint with prejudice and closed the case. Complainant appealed. The Court of Appeals summarily affirmed the judgment. Complainant continued to file post-judgment submissions with the Subject Judge. The Subject Judge struck the submissions, issued an order precluding further filings without prior court permission pursuant to the anti-filing injunction, and providing that additional unauthorized filings could result in the imposition of contempt sanctions.

Complainant claims in this complaint of judicial misconduct that “[r]acism and retaliations have come to light in these unfortunate matters,” that the Subject Judge acted “based on emotions” rather than the law, and that the Subject Judge issued orders “under nefarious means.” Complainant alleges that the Subject Judge “wrongfully” and “illegally” transferred the 2017 matter out of Circuit. Complainant further alleges that the Subject Judge’s participation in the 2022 matter is a result of “case rigging,” and he questions whether the Subject Judge presided merely “to further shield [the defendant]

from culpability.” Complainant states that he “is suffering from conduct outside the normal activities of the Court.”¹

It is apparent that Complainant is attempting to collaterally challenge several judicial rulings, including the Subject Judge’s order transferring the 2017 case, the out-of-Circuit anti-filing injunction order, and the judgment dismissing the 2022 case. 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.”). Complainant specifically requests that various orders by the Subject Judge be reversed, which is relief that is not available in this administrative proceeding. See Rules 11 & 20, Rules for Judicial-Conduct and Judicial-Disability Proceedings. “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

¹ Complainant presents additional allegations of misconduct concerning a state court clerk’s office employee, a federal court clerk’s office employee, and a law firm. None of these individuals are federal judges and therefore none of them are covered by the Judicial Conduct and Disability Act. See 28 U.S.C. §§ 351, 352(b)(1)(A)(i); Rule 1, Rules for Judicial-Conduct and Judicial-Disability Proceedings. These non-cognizable allegations will not be addressed in this opinion. Complainant additionally presents allegations of misconduct against the District Judge who presided over the 2017 matter after its out-of-Circuit transfer. A complaint naming that judge must be filed with the circuit clerk in the jurisdiction in which that judge holds office. Rule 7(a)(1), Rules for Judicial-Conduct and Judicial-Disability Proceedings. Such allegations therefore will not be considered in this opinion.

Committee on Judicial Conduct and Disability, 517 F.3d 558, 561 (U.S. Jud. Conf. 2008).

Complainant's 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.

When considered apart from his disagreement with the merits of judicial rulings, Complainant's allegations are entirely lacking in factual support. A careful review of the record reveals no evidence to substantiate Complainant's claims of racism, retaliation, "case rigging," or any other "nefarious" activity. 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)(i), (ii), and (iii).

s/ Michael A. Chagares
Chief Judge

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ORDER

(Filed: September 15, 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 15, 2023