

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. No. 03-23-90083

IN RE: COMPLAINT OF JUDICIAL MISCONDUCT
OR DISABILITY

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

MEMORANDUM OPINION

(Filed: December 14, 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 that follow, 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 defendant in a criminal proceeding over which the Subject Judge presides. Complainant submitted a previous judicial misconduct complaint against the Subject Judge in which he challenged some of her rulings in the case and claimed that the

Subject Judge was “harassing” him. That complaint was dismissed because it contained frivolous and merits-related allegations. See J.C. No. 03-22-90087. In his latest judicial misconduct complaint, Complainant continues to challenge the Subject Judge’s rulings in his criminal case, including decisions regarding jurisdiction, Speedy Trial rights, the legal requirements of charges he faces, and his motion to suppress evidence. He argues that the judge “is ready to disregard the Constitution, just to harass a litigant.” Complainant further claims that the Subject Judge has shown a “preference for the government” by denying his motion to suppress and by asking the government to file a response to Complainant’s motion to dismiss the indictment.

Complainant’s contentions here largely consist of legal arguments as to why he believes the judge’s rulings on various issues are wrong. These allegations clearly relate to the merits of his pending criminal proceeding and are accordingly not cognizable under the 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.

Moreover, although Complainant complains that the Subject Judge has exhibited bias in favor of the government, as he was instructed in his prior misconduct proceedings, the mere fact that the Subject Judge has ruled against him on some issues in the case does not constitute evidence of judicial misconduct. Likewise, it is entirely appropriate for a

judge to ask a party to respond to an opposing party's motion. It is noted that the government filed a response that relied on and incorporated its previous opposition to Complainant's prior motion to dismiss the indictment. After that, the Subject Judge accepted Complainant's reply document out of time before making her ruling. The bias claim is frivolous and unsupported by sufficient evidence raising an inference of misconduct. 28 U.S.C. § 352(b)(1)(A)(iii); Rule 11(c)(1)(C), (D), Rules for Judicial-Conduct and Judicial-Disability Proceedings.

For these reasons, the complaint will be dismissed pursuant to 28 U.S.C. § 352(b)(1)(A)(ii) and (iii).

Michael A. Chagares
Chief Judge

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ORDER

(Filed: December 14, 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.

Michael A. Chagares
Chief Judge

Dated: December 14, 2023