

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. No. 03-23-90116

IN RE: COMPLAINT OF JUDICIAL MISCONDUCT
OR DISABILITY

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

MEMORANDUM OPINION

(Filed: October 16, 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 Magistrate Judge (“Subject Judge”). For the following reasons, 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 litigant. In one of his cases assigned to the Subject Judge, Complainant alleged that prison guards pepper-sprayed him. In August 2022, the Subject Judge issued a case management order requiring the defendants to

produce various discovery. In response, the defendants provided six videos of an alleged 2018 incident involving Complainant. When Complainant asserted that other undisclosed videos of the incident might exist, the defendants filed a certification that no other videos from the date of the incident had been preserved. Complainant has continued to request disclosure of the purported video(s). He has now filed a judicial misconduct complaint against the Subject Judge complaining that she denied his request to issue a subpoena for the alleged video.

Complainant's claim that the Subject Judge erred by denying his discovery request is purely a merits-related allegation. As such, it is not cognizable under the Judicial Conduct and Disability Act and is 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. Moreover, a proceeding under 28 U.S.C. § 351 does not serve as a substitute for appeal or as a means for Complainant to obtain collateral review. See In re Memorandum of Decision of Judicial Conference Committee on Judicial Conduct and Disability, 517 F.3d 558, 561 (U.S. Jud. Conf. 2008). The claim will accordingly be dismissed.

To the extent that Complainant asserts that the Subject Judge has been biased or unfair in her rulings regarding discovery, that contention will be dismissed as frivolous and unsupported by evidence raising a reasonable 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. The District Court docket and related documents have been

reviewed and no bias is present. Rather, Complainant has filed multiple requests for a purported video that the defendants have certified under the penalty of perjury does not exist, and the Subject Judge has entertained and ruled upon each of those requests. As recently as June 2023, the Subject Judge ordered the defendants to respond to Complainant's renewed contention that the defendants had not provided all available videos of the incident. The defendants responded, and the Subject Judge entered another order highlighting the previous certification and noting that Complainant had reviewed the videos the defendants produced on two occasions.

For the foregoing reasons, the 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: October 16, 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: October 16, 2023