

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. No. 03-22-90002

IN RE: COMPLAINT OF JUDICIAL MISCONDUCT
OR DISABILITY

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

MEMORANDUM OPINION

(Filed: April 12, 2022)

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”). Complainant previously filed other complaints of judicial misconduct naming a Bankruptcy Judge, a Magistrate Judge, and another District Judge. All of her prior complaints were dismissed as frivolous and merits-related. J.C. Nos. 03-20-90018, 03-20-90029, 03-20-90081, and 03-20-90082. For the reasons discussed below, the present complaint will also 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 civil rights complaint in the District Court against a federal district judge, a federal magistrate judge, and others. The Subject Judge twice directed Complainant to show cause why a filing injunction should not be imposed against her. Complainant did not respond to either show-cause order and the Subject Judge entered an order imposing a filing injunction. Complainant alleges that the Subject Judge is “precluding” Complainant from filing a lawsuit and preventing the court from acting on other cases. Complainant also alleges that the Subject Judge held ex parte discussions with defendant counsel, is engaged in corruption, and is biased, among other allegations.¹

It is evident that Complainant seeks to dispute the merits of the Subject Judge’s procedural rulings and decisions. Specifically, she seems to be complaining about a “preclusion order” that was entered against her, the Subject Judge’s refusal to permit discovery, and the Subject Judge’s failure to recuse herself, among other decisions. Allegations disputing the merits of judicial rulings do not constitute cognizable misconduct under the Judicial Conduct and Disability Act. “Cognizable misconduct does not include an allegation that calls into question the correctness of a judge’s ruling, including a failure to recuse.” Rule 4(b)(1), Rules for Judicial-Conduct and Judicial-Disability Proceedings. Merits-related allegations are not cognizable as misconduct

¹ Complainant also references other judges who have not been named as Subject Judges. I have considered these allegations pursuant to Rule 5 of the Rules for Judicial-Conduct and Judicial-Disability Proceedings and decline to identify a complaint based upon these allegations.

because the “misconduct procedure [under the 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). Thus, all such non-cognizable 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.²

To the extent that Complainant’s allegations are not based solely on her disagreement with the merits of the Subject Judge’s rulings, they are unsubstantiated. There is no evidence of bias, corruption, or any ex parte communications. This complaint, therefore, is subject to dismissal 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)(ii) and (iii). Complainant was cautioned previously pursuant to Rule 10(a) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings that she appeared to be engaged in the abuse of the complaint procedure.³ See J.C. Nos. 03-20-90081 and 03-

² In any event, it is noted that Complainant filed an appeal of the preclusion order that remains pending. I express no opinion as to the merits of her appeal.

³ Rule 10(a) of the *Rules for Judicial-Conduct and Judicial-Disability Proceedings* provides:

20-90082. In view of the frivolous and merits-related nature of the present complaint, this caution is repeated here.

s/ Michael A. Chagares
Chief Judge

Abusive Complaints. A complainant who has filed repetitive, harassing, or frivolous complaints, or has otherwise abused the complaint procedure, may be restricted from filing further complaints. After giving the complainant an opportunity to show cause in writing why his or her right to file further complaints should not be limited, the judicial council may prohibit, restrict, or impose conditions on the complainant's use of the complaint procedure. Upon written request of the complainant, the judicial council may revise or withdraw any prohibition, restriction, or condition previously imposed.

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ORDER

(Filed: April 12, 2022)

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: April 12, 2022