

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. No. 03-22-90113

IN RE: COMPLAINT OF JUDICIAL MISCONDUCT
OR DISABILITY

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

MEMORANDUM OPINION

(Filed: February 10, 2023)

PRESENT: CHAGARES, Chief Judge.

The present complaint was 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.¹

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 The Subject Judge filed a response to Complainant’s complaint. This response was not provided to Complainant in accordance with 28 U.S.C. § 352(a)(2).

Complainant alleges that the Subject Judge engaged in delay with respect to Complainant's motion under 28 U.S.C. § 2255 and failed to reply to his correspondence and other filings. Complainant further contends that there is no record on the docket of a decision on Complainant's request to amend his Section 2255 motion. Also, Complainant complains that his requests for counsel and discovery were denied and that he was excluded from a conference call, among other allegations.

To the extent Complainant seeks to collaterally attack the Subject Judge's decisions in his Section 2255 proceedings, it is evident that his allegations are not cognizable under the Judicial Conduct and Disability Act. Such 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."). See also 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 Act is intended to further 'the effective and expeditious administration of the business of the courts.' It would be entirely contrary to that purpose to use a misconduct proceeding to obtain redress for—or even criticism of—the merits of a decision with which a litigant or misconduct complainant disagrees.") Complainant's merits-related allegations are, therefore, 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.

Complainant's allegations of delay are likewise subject to dismissal. See Rules 4(b)(2) (cognizable misconduct does not include "an allegation about delay in rendering a decision or ruling, unless the allegation concerns an improper motive in delaying a particular decision or habitual delay in a significant number of unrelated cases"), 11(c)(1)(B), Rules for Judicial-Conduct and Judicial-Disability Proceedings. To the extent Complainant suggests that the Subject Judge had an improper motive for his putative delay, his allegations are dismissed pursuant to 28 U.S.C. § 352(b)(1)(A)(iii) as unsupported by any evidence that would raise an inference that misconduct occurred. The record reflects that Complainant filed his Section 2255 motion near the end of 2018, as well as an application for an extension of time. The Subject Judge set a briefing schedule and then granted the Government's subsequent request for extension of time in mid-2019. Complainant sent several letters to the Court, and, in December 2019, the Subject Judge issued a memorandum opinion and order providing a deadline for Complainant to file a reply brief in support of his Section 2255 motion. Counsel entered an appearance on behalf of Complainant in February 2020, and the Subject Judge issued an order near the end of 2021 determining that Complainant's request to amend his motion to vacate was denied as time-barred. More recently, Complainant was appointed new counsel and an evidentiary hearing was held on part of Complainant's Section 2255 motion. Accordingly, the record does not support an allegation of delay for an improper motive.

With respect to Complainant's allegation that he was not included in a teleconference, it appears from the minutes on the docket that the conference in question

was a brief call with counsel of record about rescheduling the evidentiary hearing. This is not judicial misconduct. Also, although Complainant appears to allege that the Subject Judge has ignored his rights and did not address his requests for relief, Complainant's allegations are contradicted by the record. The record reflects that the Subject Judge addressed Complainant's letter requests for counsel, discovery, and to amend his Section 2255 motion. Complainant's disagreement with the Subject Judge's decisions is not evidence of judicial misconduct. Complainant's remaining allegations are, therefore, dismissed as frivolous and unsupported by any evidence that would raise an inference that judicial misconduct has occurred. 28 U.S.C. § 352(b)(1)(A)(iii); Rule 11(c)(1)(C), 11(c)(1)(D), Rules for Judicial-Conduct and Judicial-Disability Proceedings.

Based on the foregoing, 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: February 10, 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.

s/ Michael A. Chagares
Chief Judge

Dated: February 10, 2023