

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. No. 03-22-90012

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 Magistrate 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).

Complainant¹ was a plaintiff in two civil proceedings that were referred to the Subject Judge. In the course of those proceedings, Complainant filed numerous requests to compel the arrest of two defendants. All such requests were denied.

In this complaint of judicial misconduct, Complainant alleges that the Subject Judge's "primary misconduct" is the decision not to compel the arrest of the two defendants. Complainant contends that this "primary misconduct" demonstrates that the Subject Judge used his office to obtain special treatment for others, engaged in conduct prejudicial to the administration of the courts, failed to perform an "absolute duty," violated several Canons of the Code of Conduct for United States Judges, and caused "improper and habitual delay" in initiating criminal proceedings.

The Subject Judge's denials of Complainant's numerous requests to compel arrests constitutes judicial decision-making. Because Complainant's allegations merely reflect his disagreement with those decisions, the allegations are merits related and not cognizable as 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."). Indeed, Complainant filed two petitions for a writ of mandamus in the Court of Appeals in which he presented similar allegations. The first mandamus petition was denied and the second remains pending. This administrative proceeding does not provide an alternative avenue to pursue the same relief. The merits-related allegations are therefore subject to dismissal.

¹ Although the complaint also purports to be filed by two additional individuals including a minor child, only Complainant signed the complaint under penalty of perjury.

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 the merits-related allegations, Complainant's remaining claims are groundless. The record does not reveal any basis to support a conclusion that the Subject Judge has engaged in the forms of judicial misconduct Complainant has identified. Such allegations are therefore 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), (iii). Complainant is hereby cautioned pursuant to Rule 10 of the Rules for Judicial-Conduct and Judicial-Disability Proceedings that filing repetitive, harassing, or frivolous complaints in the future may result in the imposition of restrictions pursuant to this provision.²

² Rule 10(a) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings provides:

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.

s/ Michael A. Chagares
Chief Judge

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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