

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. No. 03-22-90014

IN RE: COMPLAINT OF JUDICIAL MISCONDUCT
OR DISABILITY

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

MEMORANDUM OPINION

(Filed: April 26, 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”). 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).

Complainant was a plaintiff in an employment discrimination action. The Subject Judge granted summary judgment to the employer. On appeal, the Court of Appeals affirmed the judgment. Although this complaint of judicial misconduct does not expressly

specify any allegations of misconduct, Complainant appends a series of filings from the District Court action and the appeal, including a brief seeking en banc rehearing before the Court of Appeals on grounds that the Subject Judge's decisions throughout the case were "based on the judge's prior work history and bias" in favor of the defense. Specifically, Complainant alleges that, prior to taking the bench, the Subject Judge represented the law firm retained by the defendants in Complainant's employment discrimination action.

Complainant attempts to challenge virtually every adverse ruling rendered by the Subject Judge in the course of her civil action. 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."). "The misconduct procedure [under the Judicial Conduct and Disability 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).

Indeed, Complainant filed three separate motions for the Subject Judge's recusal raising allegations of bias based upon the Subject Judge's employment history. The Subject Judge denied the motions. The Subject Judge determined that Complainant's allegations largely reflected dissatisfaction with the merits of judicial rulings, which is not a valid basis for recusal. The Subject Judge further rejected the claims of favoritism based

upon a prior employment relationship with defense counsel. Among other things, the Subject Judge observed that he “never represented any party to this litigation” and that “none of the lawyers with whom [he] previously practiced law served as a lawyer in this matter during my association with them.” Complainant’s dispute with the Subject Judge’s decision to deny recusal is itself merits-related. See Rule 4(b)(1), Rules for Judicial-Conduct and Judicial-Disability Proceedings. Such merits-related 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.

Complainant’s non-merits-related allegations are unsubstantiated. The prior professional relationship Complainant has identified does not automatically give rise to a circumstance in which the Subject Judges’ impartiality might reasonably be questioned. See, e.g., Canon 3(C)(1), Code of Conduct for United States Judges (listing circumstances, not applicable here, in which a judge’s impartiality might be reasonably questioned, such as having a financial interest in the outcome of the case).¹ Accordingly, the allegations are also 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.

¹ The Code of Conduct for United States Judges is designed to provide guidance to judges but is not a set of disciplinary rules. “While the Code’s Canons are instructive, ultimately the responsibility for determining what constitutes cognizable misconduct is determined by the Act and these Rules, as interpreted and applied by judicial councils, subject to review and limitations prescribed by the Act and these Rules.” Commentary on Rule 4, 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).

s/ Michael A. Chagares
Chief Judge

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ORDER

(Filed: April 26, 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 26, 2022