

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. No. 03-22-90022

IN RE: COMPLAINT OF JUDICIAL MISCONDUCT
OR DISABILITY

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

MEMORANDUM OPINION

(Filed: August 16, 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).

Complainant sought to file a civil suit against individuals from the Drug Enforcement Agency and two United States Customs Officers. The Subject Judge issued an order requiring Complainant to demonstrate proof of service on the defendants. The

Subject Judge thereafter issued a Report and Recommendation recommending that the lawsuit be dismissed because of the failure to effect service. In the present complaint, Complainant has not made any specific allegations against the Subject Judge. Rather, he attached multiple copies of an unsuccessful mandamus petition. In that petition, Complainant argued that the Subject Judge exhibited bias and prejudice against him.

It appears that Complainant seeks to collaterally attack the Subject Judge's Report and Recommendation recommending that his lawsuit be dismissed without prejudice. These allegations are plainly merits-related. See Rule 4(b)(1), Rules for Judicial-Conduct and Judicial-Disability Proceedings. Such merits-related allegations do not constitute cognizable misconduct and 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.

To the extent Complainant alleges that the Subject Judge is biased or prejudiced against him, his allegations are unsubstantiated. Indeed, the mandamus petition that Complainant attached in support of his complaint was denied by a panel of Third Circuit Court of Appeals Judges. A District Court Judge has since ruled on and adopted the Subject Judge's Report and Recommendation and denied a subsequent motion for reconsideration.¹ There is no evidence of judicial misconduct of any kind. Accordingly, the remaining allegations are subject to dismissal as frivolous and unsupported by evidence that would raise an inference that misconduct has occurred. 28 U.S.C.

¹ Complainant filed a notice of appeal and that appeal is pending.

§ 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).

s/ Michael A. Chagares
Chief Judge

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ORDER

(Filed: August 16, 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: August 16, 2022