

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. No. 03-22-90027

IN RE: COMPLAINT OF JUDICIAL MISCONDUCT
OR DISABILITY

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

MEMORANDUM OPINION

(Filed: June 7, 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, a prisoner, filed a pro se putative class action claiming that various entities employed inadequate safety measures to protect prisoners against COVID-19. The Subject Judge dismissed all plaintiffs apart from Complainant on grounds that

Complainant, a non-lawyer, cannot represent other parties. Complainant sought appointment of counsel and class certification and the Subject Judge summarily denied both requests. A municipal defendant filed a motion to dismiss, which the Subject Judge granted as unopposed. Shortly thereafter, Complainant wrote a letter to the District Court stating that he had not been receiving copies of orders in his case. Most recently, the case was randomly reassigned to a new District Judge.¹ Complainant since has filed a motion seeking reconsideration of the Subject Judge's order denying class certification and appointment of counsel and the order granting a partial dismissal. The motion remains pending.

In this complaint of judicial misconduct, Complainant alleges that he did not receive copies of several court orders. Complainant predicts that a defendant's pending motion to dismiss the complaint will be granted and alleges that the Subject Judge has engaged in a "malicious abuse of process."²

To the extent the complaint is intended to challenge the Subject Judge's orders, 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

¹ The new District Judge is not named as a Subject Judge of the complaint of misconduct.

² Complainant requests the Subject Judge's recusal. Because the case has now been randomly reassigned to a new District Judge, the request appears to be moot.

Nonetheless, it is noted that a request for recusal must be presented to the presiding judge in the first instance. A substantive decision rendered on a recusal motion is merits-related and non-cognizable. See Rule 4(b)(1), Rules for Judicial-Conduct and Judicial-Disability Proceedings.

judge's ruling, including a failure to recuse.”). 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. Indeed, Complainant has filed a motion seeking reconsideration of several of the Subject Judge's orders, and that motion remains pending. “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).

Although Complainant presents concerns regarding his receipt of court orders, such allegations do not implicate the Subject Judge. The District Court Clerk's Office is charged with mailing court filings to pro se litigants. Clerk's Office employees are not federal judges and therefore are not subject to the Judicial Conduct and Disability Act. See 28 U.S.C. § 351(d); Rule 1(b), Rules for Judicial-Conduct and Judicial-Disability Proceedings. Moreover, the Clerk's Office has no control over the postal service or the prison mail system. Accordingly, to the extent the complaint implies misconduct on the part of Clerk's Office employees or others, such allegations will not be addressed in this opinion. See 28 U.S.C. §§ 351, 352(b)(1)(A)(i).

Finally, Complainant's remaining allegations of “malicious abuse of process” are unsubstantiated. The record does not support a conclusion that the Subject Judge engaged in judicial misconduct. Accordingly, the allegations are 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)(i), (ii), and (iii).

s/ Michael A. Chagares
Chief Judge

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ORDER

(Filed: June 7, 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)(i), (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: June 7, 2022