

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. No. 03-22-90032

IN RE: COMPLAINT OF JUDICIAL MISCONDUCT
OR DISABILITY

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

MEMORANDUM OPINION

(Filed: July 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 is a defendant in a criminal proceeding before the Subject Judge. Complainant moved to proceed pro se, and the Subject Judge denied the request. In addition, at the Subject Judge’s direction, a competency evaluation of Complainant was

conducted. Complainant also filed a pro se motion for the Subject Judge's recusal, which the Subject Judge denied on grounds that Complainant is represented by counsel. Counsel has, to date, declined to file a recusal motion on Complainant's behalf. The matter is ongoing and has not yet been set for trial.

In this complaint of judicial misconduct, Complainant claims that the Subject Judge harbors a bias against him and has engaged in a "reckless abuse of power." Complainant specifically alleges that the Subject Judge "act[ed] as a prosecutor and Judge at the same time" by questioning Complainant during a status hearing, violated Complainant's Sixth Amendment rights by declining to allow Complainant to proceed pro se, ordered Complainant to undergo a mental competency evaluation, accused Complainant of being disruptive, and made inaccurate statements about Complainant during court proceedings. Complainant further alleges that the Subject Judge's rulings are "so outlandish or irrational as to give rise to an inference of bias, and disruption of justice."

Many of the allegations of the complaint are intended to challenge rulings rendered by the Subject Judge during the course of the ongoing criminal proceeding, including the denial of Complainant's request to proceed pro se and the decision not to recuse. 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."). Indeed, inasmuch as a final judgment has not yet been entered in the criminal case, the Subject Judge's rulings may in the future be the subject of

an appeal if counsel chooses to pursue one. “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). 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 non-merits-related claims are entirely unsubstantiated. There is no evidence that the Subject Judge’s rulings are outlandish or irrational. A review of the record does not support such claims, nor does it reveal that the Subject Judge is biased, has engaged in an abuse of power, has acted recklessly, or has otherwise engaged in any form of judicial misconduct. 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. § 352(b)(1)(A)(iii); Rule 11(c)(1)(C), (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: July 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: July 26, 2022