

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. Nos. 03-22-90046; 03-22-90047;
03-22-90048; 03-22-90049; 03-22-90050

IN RE: COMPLAINT OF JUDICIAL MISCONDUCT
OR DISABILITY

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

MEMORANDUM OPINION

(Filed: September 8, 2022)

PRESENT: CHAGARES, Chief Judge.

These complaints are filed under the Judicial Conduct and Disability Act, 28 U.S.C. §§ 351-64, against two United States District Judges (“Subject Judge I” and “Subject Judge II”) and a United States Magistrate Judge (“Subject Judge III”). For the reasons discussed below, the complaints 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 frequent pro se litigant, has filed two complaints of judicial misconduct. The first complaint concerns a civil rights action that was assigned to Subject Judge I and later was referred to Subject Judge III. Subject Judge I issued an order denying a preliminary injunction, dismissing the complaint, and issuing an order to show cause why Complainant should not be enjoined from future repetitive filings. Before ruling on the show cause order, however, Subject Judges I and III both recused and the case has been reassigned. The matter remains pending and, to date, no pre-filing injunction has been issued. In the misconduct complaint, Complainant alleges that Subject Judges I and III “conspire[ed] to cover up very well pleaded civil complaints with supporting evidences.” Complainant alleges that Subject Judge I’s order to show cause was unwarranted; he accuses the Subject Judges of bias and “pigheadedness” and alleges that he is not attempting to challenge unfavorable judicial decisions but instead is bringing to light a coverup.

The second misconduct complaint concerns an earlier-filed civil rights action. After substantial proceedings before a different District Judge, that matter was reassigned to Subject Judges I and III. Subject Judge I dismissed the operative complaint without prejudice and granted leave to amend. Shortly thereafter, Subject Judges I and III recused from the case and the matter was again reassigned. The matter remains pending before a new District Judge. As in the first misconduct complaint, Complainant alleges that the three Subject Judges are biased, involved in “very serious corruption,” and are “conspiring to coverup [Complainant’s] very well pleaded civil complaints with supporting

evidences.” Among other things, Complainant alleges that the Subject Judges failed to order discovery, “fraudulently” dismissed his case, and “ignored” his evidence due to “pigheadedness.” In addition, Complainant alleges that he made Subject Judge II aware of his concerns and Subject Judge II did not intervene.

Although Complainant alleges that he does not wish to dispute the merits of any judicial rulings, it is apparent that many of the allegations of the complaint are intended as a collateral challenge to unfavorable rulings. 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, Complainant states that he intends to both appeal the Subject Judges’ rulings and will file a new lawsuit against the Subject Judges raising these same claims. This administrative proceeding does not provide another avenue for presenting the merits of such claims. “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 of bias, coverup, and corruption all lack substantiation. Complainant points to no evidence apart from the judicial rulings with which he disagrees. These allegations are therefore subject to dismissal as 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)(D), Rules for Judicial-Conduct and Judicial-Disability Proceedings.

Based on the foregoing, the two complaints will be dismissed pursuant to 28 U.S.C. § 352(b)(1)(A)(ii) and (iii). It is noted that Complainant previously filed a misconduct complaint against a different Subject Judge. See J.C. No. 03-21-90014. That complaint also was dismissed as merits-related, unsubstantiated, and frivolous. Because Complainant has now filed three complaints that have been determined to be merits-related, unsubstantiated, and frivolous, Complainant is cautioned pursuant to Rule 10 of the Rules for Judicial-Conduct and Judicial-Disability Proceedings that continued filing of repetitive, harassing, or frivolous complaints may result in the imposition of restrictions pursuant to this provision.¹

¹ 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: September 8, 2022)

PRESENT: CHAGARES, Chief Judge.

On the basis of the foregoing opinion entered on this date, it is ORDERED AND ADJUDGED that the written complaints brought pursuant to 28 U.S.C. § 351 are 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: September 8, 2022