

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. No. 03-22-90052

IN RE: COMPLAINT OF JUDICIAL MISCONDUCT
OR DISABILITY

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

MEMORANDUM OPINION

(Filed: September 13, 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 civil rights action concerning his application for a sentence modification. The Subject Judge screened the complaint pursuant to 28 U.S.C. § 1915 and dismissed it for failure to state a claim. Complainant did not appeal.

In this complaint of judicial misconduct, Complainant alleges that the opinion dismissing the complaint reflects bias on the part of the Subject Judge. Complainant claims that he is entitled to relief and that the Subject Judge's ruling reflects a failure to adequately investigate the relevant evidence. Complainant further alleges that that the opinion "creates a false narrative" that Complainant is "a crazy person." As relief, Complainant requests a sentencing review.

The allegations of the complaint are intended, at least in part, to challenge the Subject Judge's dismissal order. Such a challenge is merits related and does 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."). 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 seeks a sentence modification, which is the same relief that his civil rights action was intended to achieve and is unavailable in this administrative proceeding. See, e.g., Rule 20, Rules for Judicial-Conduct and Judicial-Disability Proceedings (describing available remedies under the Rules). Complainant chose not to appeal the Subject Judge's dismissal order, and "[t]he 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 non-merits-related claim of bias lacks substantiation. Although Complainant considers the Subject Judge's opinion to be personally insulting, an objective review does not reveal any language that either explicitly or implicitly denigrates Complainant or otherwise reflects prejudice on the part of the Subject Judge. Complainant's remaining 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 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: September 13, 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: September 13, 2022