

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. No. 03-22-90053

IN RE: COMPLAINT OF JUDICIAL MISCONDUCT
OR DISABILITY

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

MEMORANDUM OPINION

(Filed: September 14, 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 filed a pro se civil action that was referred to the Subject Judge. The Subject Judge conducted a settlement conference that resulted in a settlement. The parties subsequently entered a joint stipulation dismissing the case.

In this complaint of judicial misconduct, Complainant alleges that the Subject Judge “is partial and favors Defendant and has prejudice against [Complainant].” Complainant alleges that the Subject Judge denied Complainant’s discovery requests but granted the defendant’s discovery requests although they allegedly were “complete legally irrelevant.” In addition, Complainant alleges that, during the settlement conference, the Subject Judge showed sympathy for defendant’s difficulties during the COVID-19 pandemic, did not discuss Complainant’s claims, became impatient with Complainant, suggested that the defendant’s counterclaim was stronger than Complainant’s claim, “humiliat[ed]” complainant by conducting a colloquy about the settlement, and “lied” to Complainant by stating that an oral agreement was sufficient to memorialize the settlement.¹ Complainant accuses the Subject Judge of engaging in abuse of process and of “tak[ing] advantage” of Complainant’s pro se status.

Several of the allegations of the complaint are intended to challenge rulings rendered by the Subject Judge, including discovery 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, although not explicit, it seems that Complainant may be attempting to challenge the validity of the settlement agreement. If so, then this administrative

¹ The record reflects that the parties were not required to reduce their settlement agreement to writing and instead placed the terms of the agreement on the record during the oral colloquy. The Subject Judge did, however, later require the parties to file a written stipulation of dismissal.

proceeding is not a proper forum for such a challenge. “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 lack substantiation. No transcript is available memorializing the first portion of the settlement conference with which Complainant takes issue. Nonetheless, even accepting as true Complainant’s description of events, including expressions of sympathy for the defendant and mild impatience with Complainant, none rises to the level of demonstrably egregious and hostile treatment that would constitute judicial misconduct. See Rule 4(a)(2)(B), Rules for Judicial-Conduct and Judicial-Disability Proceedings (defining abusive or harassing behavior constituting judicial misconduct). The allegations therefore do not describe conduct that, even if true, is prejudicial to the effective and expeditious administration of the courts. Rule 11(c)(1)(A), Rules for Judicial-Conduct and Judicial-Disability Proceedings.

Moreover, the available record does not lend support to Complainant’s claims. The transcript of the colloquy reflects that the Subject Judge did not require the parties to reduce their settlement agreement to writing, undermining Complainant’s suggestion that

the Subject Judge “lied” about that issue. Similarly, nothing about the colloquy reflects any effort by the Subject Judge to “humiliate” Complainant. Complainant stated on the record that she entered the settlement of her own volition and without intimidation. 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 14, 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 14, 2022