

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

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J.C. Nos. 03-22-90054 & 03-22-90055

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IN RE: COMPLAINT OF JUDICIAL MISCONDUCT  
OR DISABILITY

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

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MEMORANDUM OPINION

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(Filed: September 15, 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 I”) and a United States Magistrate Judge (“Subject Judge II”). 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 former prisoner, filed two pro se civil rights actions concerning an alleged assault by a prison guard that occurred during his imprisonment. The matters were consolidated and are pending before Subject Judges I and II.

In this complaint of judicial misconduct, Complainant alleges that it is unethical for a government attorney to represent the “discredited” defendant whose conduct is at issue in the consolidated action. In addition, Complainant alleges that the same government attorney is representing a fact witness as well as the defendant. Complainant claims the dual representation is a conflict of interest and is impeding his ability to obtain discovery from the witness. Complainant presented these concerns to the Subject Judges in a motion styled “motion for default judgment/summary judgment.” Subject Judge I adjourned the motion until after the close of discovery.

Complainant’s allegations primarily concern the behavior of a government attorney, not the Subject Judges. Individuals who are not federal judges 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. Allegations of misconduct concerning the government attorney therefore will be dismissed as non-cognizable and will not be addressed in this opinion. See 28 U.S.C. §§ 351, 352(b)(1)(A)(i).

To the extent the allegations of the complaint concern the Subject Judges at all, they challenge Subject Judge I’s decision to adjourn the motion for default judgment/

summary judgment.<sup>1</sup> Such allegations concern the correctness of a judicial ruling and are therefore merits-related. Merits-related allegations 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.”). Such 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.

Based on the foregoing, this complaint will be dismissed pursuant to 28 U.S.C. § 352(b)(1)(A)(i) and (ii).

s/ Michael A. Chagares  
Chief Judge

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<sup>1</sup> Complainant has not filed a motion to disqualify the allegedly conflicted government attorney. If Complainant were to file a motion to disqualify, any challenge to a ruling on the motion would be merits-related and non-cognizable as judicial misconduct. 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.

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ORDER

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(Filed: September 15, 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) and (ii).

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](http://www.ca3.uscourts.gov).

s/ Michael A. Chagares  
Chief Judge

Dated: September 15, 2022