

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

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J.C. No. 03-22-90073

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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: October 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 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 filed a pro se employment discrimination action in 2018 that was assigned to the Subject Judge. During the course of the proceeding, Complainant filed multiple motions for the Subject Judge’s recusal. The Subject Judge denied the motions.

The Subject Judge ultimately granted summary judgment to the employer and closed the case. The Court of Appeals affirmed. Complainant sought to file an untimely petition for rehearing, but the motion was denied. Complainant has been advised that no further submissions will be considered in the closed appeal.

In the current submission, Complainant alleges that the Subject Judge “has demonstrated that he is bias[ed] and prejudice[d].” Complainant provides a list of numerous rulings with which she disagrees, contending that the Subject Judge violated her constitutional rights and engaged in “extrinsic fraud on the court.” Complainant also observes, however, that “there is no reason for the Appellant to review or file another complaint under Rule 6 [of the Rules for Judicial-Conduct and Judicial-Disability Proceedings]” because her two prior complaints of judicial misconduct raising similar allegations have concluded and are not subject to further appeal. Accordingly, Complainant avers that she “will exhaust administrative claims first and then pursue a lawsuit.”

Given Complainant’s statements, it is unclear whether or not this submission was intended to be a formal complaint of judicial misconduct pursuant to Rule 6 of the Rules for Judicial-Conduct and Judicial-Disability Proceedings. Nonetheless, as it was signed under penalty of perjury, refers to 28 U.S.C. § 351, was directed to the undersigned Chief Judge, and puts forth allegations of misconduct, the submission will be considered under Rule 6 in an abundance of caution.

Complainant's allegations largely challenge rulings rendered by the Subject Judge in the course of Complainant's civil action. 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 unsuccessfully appealed to the Court of Appeals. This administrative proceeding does not provide another opportunity for substantive review of the same rulings. "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); Rule 4(b)(1), 11(c)(1)(B), Rules for Judicial-Conduct and Judicial-Disability Proceedings.

Complainant's non-merits-related allegations of bias and prejudice are unsubstantiated. The record does not provide support for a claim of judicial misconduct. Accordingly, the 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, this complaint will be dismissed pursuant to 28 U.S.C. § 352(b)(1)(A)(ii) and (iii). Complainant filed two prior misconduct complaints against the Subject Judge that were determined to be merits-related, unsubstantiated, and frivolous. See J.C. Nos. 03-20-90005, 03-22-90014. Complainant therefore is cautioned pursuant to Rule 10 of the Rules for Judicial-Conduct and Judicial-Disability Proceedings.<sup>1</sup> Continued filing of repetitive, harassing, or frivolous complaints may result in the imposition of restrictions pursuant to this provision.

s/ Michael A. Chagares  
Chief Judge

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<sup>1</sup> 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.

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ORDER

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

s/ Michael A. Chagares  
Chief Judge

Dated: October 14, 2022