

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. Nos. 03-22-90076, 03-22-90077, 03-22-90078, 03-22-90079

IN RE: COMPLAINT OF JUDICIAL MISCONDUCT
OR DISABILITY

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

MEMORANDUM OPINION

(Filed: December 20, 2022)

PRESENT: CHAGARES, Chief Judge.

The above-captioned complaints were filed under the Judicial Conduct and Disability Act, 28 U.S.C. §§ 351-64, against a United States District Judge (“Subject Judge I”) and three United States Circuit Judges (“Subject Judge II,” “Subject Judge III,” and “Subject Judge IV”). 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's allegations concern an unsuccessful habeas petition that was filed in the Seventh Circuit. Complainant further states that his complaint is "against every federal district and circuit judge who presided over [Complainant's] pro se federal habeas petition: having known that the habeas petition was decided by per se conflicted [Seventh Circuit District Judge]. This was not gross incompetence, but insidious complicity by plain bigots."¹ This statement appears to be a reference to orders entered by the Subject Judges dismissing or denying Complainant's attempts to obtain habeas relief outside of the Seventh Circuit. The only documentation submitted by Complainant in support of his misconduct complaint are documents related to his Seventh Circuit habeas proceedings.

To the extent that Complainant seeks to collaterally attack a decision by Subject Judges II, III, and IV denying permission to file a second or successive habeas petition in the Third Circuit, his allegations are not cognizable. Similarly, Complainant's apparent attempt to challenge Subject Judge I's order dismissing a habeas petition for lack of subject matter jurisdiction is likewise not cognizable in these proceedings. Allegations challenging the merits of decisions in a case 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."). Merits-related allegations are subject to

¹ As Complainant was advised, Complainant's complaints were only accepted for filing against the Third Circuit District Judge and Circuit Judges named in his complaint. To the extent Complainant seeks to make allegations against Seventh Circuit Judges in the present proceeding, his allegations will not be addressed. In any event, as discussed below, his misconduct allegations are without merit.

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. 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). In brief, the Subject Judges’ decisions regarding Complainant’s attempts to obtain habeas relief are not subject to collateral challenge in this administrative proceeding. Accordingly, these allegations are dismissed.

Complainant’s allegations concerning the Subject Judges’ supposed “insidious complicity” with the putative misconduct of a Seventh Circuit District Judge are completely unsubstantiated. Complainant’s only support for this assertion appears to be his disagreement with the Subject Judges’ decisions. Complainant’s remaining allegations are therefore 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); Rules 11(c)(1)(C), 11(c)(1)(D), Rules for Judicial-Conduct and Judicial-Disability Proceedings.

Based on the foregoing, the complaints 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: December 20, 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: December 20, 2022