

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. Nos. 03-22-90090, 03-22-90091, 03-22-90092, 03-22-90093, 03-22-90115

IN RE: COMPLAINT OF JUDICIAL MISCONDUCT
OR DISABILITY

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

MEMORANDUM OPINION

(Filed: March 1, 2023)

PRESENT: CHAGARES, Chief Judge.

The above-captioned complaint was filed under the Judicial Conduct and Disability Act, 28 U.S.C. §§ 351-64, against two United States District Judges (“Subject Judge I and II”) and three United States Magistrate Judges (“Subject Judge III,” “Subject Judge IV,” and “Subject Judge V”). For the reasons discussed below, the complaint will be dismissed.¹

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

¹ Complainant also makes allegations concerning attorneys and clerk’s office employees. These allegations cannot be addressed in these proceedings because the Judicial Conduct and Disability Act only applies to federal judges. Rule 1, Rules for Judicial-Conduct and Judicial-Disability Proceedings.

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 civil action. Complainant alleges that the Subject Judges were biased towards him and sabotaged his case. Complainant also alleges the Subject Judges should have reported the putative misconduct of attorneys in his case. In addition, Complainant alleges that there were ex parte communications with defendant's counsel and Complainant's own counsel.

To the extent that Complainant seeks to collaterally attack the Subject Judges' decisions in his civil suit, such as the dismissal of his lawsuit without a hearing, Complainant's allegations are not cognizable. 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 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). Accordingly, these allegations are dismissed.

Complainant's allegations concerning the Subject Judges' supposed bias and the existence of ex parte communications are unsupported by the record. Indeed, Complainant states that his own attorney was present for the alleged ex parte communications. As Complainant's counsel was present, the communications were not ex parte.² Furthermore, the assignment of different judges to Complainant's civil case at various points in time is not evidence of judicial misconduct. Complainant's only other support for his allegations of judicial misconduct 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 complaint will be dismissed pursuant to 28 U.S.C. § 352(b)(1)(A)(i), (ii), and (iii).

s/ Michael A. Chagares
Chief Judge

² According to the docket, this attorney no longer represents Complainant.

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ORDER

(Filed: March 1, 2023)

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), (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: March 1, 2023