

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. Nos. 03-22-90102, 03-22-90114

IN RE: COMPLAINTS OF JUDICIAL MISCONDUCT
OR DISABILITY

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

MEMORANDUM OPINION

(Filed: April 20, 2023)

PRESENT: CHAGARES, Chief Judge.

These complaints are filed under the Judicial Conduct and Disability Act, 28 U.S.C. §§ 351-64, against a United States District Judge (the “Subject Judge”). 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 has filed two complaints of judicial misconduct. The first complaint accuses the Subject Judge of violating the Constitution, racism, lying, abusing the judicial office, and committing fraud on the court in the context of rulings rendered in

Complainant's consolidated pro se employment discrimination action. Complainant alleges, among other things, that the Subject Judge improperly dismissed the employment action under a "fraudulent pretext" that Complainant had refused to participate in a pre-trial conference. Complainant argues that the defendants, not he, refused to participate in an earlier conference, and that Complainant was justified in objecting to a second conference. Complainant further alleges that he should have been permitted to file a sur-reply prior to the grant of summary judgment against him to respond to the defendants' allegedly false claim that he refused to participate in a pre-trial conference.

Complainant further alleges that the Subject Judge improperly issued an anti-filing injunction against him. Complainant claims the order reflects the Subject Judge's improper motivation to provide favors to and assist the defendants, equating the Subject Judge's alleged bias to "nepotism and fascism." Complainant claims the anti-filing injunction, as well as an earlier "secret" exclusion order allegedly issued against him without notice, interfered with Complainant's ability to pursue other pending cases.

Complainant also alleges racism on the part of the Subject Judge because the Subject Judge had difficulty pronouncing Complainant's surname during a hearing.

Complainant's second complaint of judicial misconduct alleges that the Subject Judge retaliated against him for filing the first complaint of judicial misconduct. Specifically, Complainant alleges that he sent a notice and attachments to the District Court to advise of the filing of the misconduct complaint, but certain documents were not docketed, while others, including a recusal motion, were docketed. According to

Complainant, a call to the District Court Clerk's Office revealed that the Subject Judge had not authorized the Clerk to docket certain submissions pursuant to the previously entered exclusion order. Complainant further alleges that the Subject Judge issued the anti-filing injunction in retaliation for filing the misconduct complaint and improperly denied Complainant's recusal motions.

Most of Complainant's allegations challenge the merits of judicial rulings by the Subject Judge, including the issuance of the exclusion order and anti-filing injunction, the decision to decline a sur-reply to the summary judgment motion, the decision not to recuse, and the entry of judgment. All such allegations are merits related. Merits-related allegations do not constitute cognizable misconduct. Rule 4(b)(1), Rules for Judicial-Conduct and Judicial-Disability Proceedings.

Complainant challenged the merits of the Subject Judge's decision to grant summary judgment to the defendants first by filing a motion under Fed. R. Civ. P. 60(b) and later via appeal, and such challenges did not succeed. He also raised many of the issues in these misconduct complaints in his motions for the Subject Judge's recusal, which the Subject Judge also denied. In the denial order, the Subject Judge observed that Complainant was using the recusal "as a vehicle to relitigate long-settled matters and simply attack the decisionmaker for decisions he disagrees with." It appears Complainant is attempting to do the same via the misconduct procedures. This administrative proceeding does not, however, provide yet another opportunity to pursue substantive challenges to the Subject Judge's rulings. Complainant's merits-related allegations are

therefore subject to dismissal.¹ 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 allegations of bias, racism, abuse of office, retaliation, and other forms of misconduct are for the most part premised on merits-related disagreements. To the extent they are not, the allegations entirely lack support. The Subject Judge’s difficulty in pronouncing Complainant’s name does not give rise to a reasonable inference of racism or bias. There is no evidence whatsoever that the Subject Judge issued orders unfavorable to Complainant solely as a response to his filing of a complaint of judicial misconduct. Careful review of the two complaints and extensive exhibits, as well as the record as a whole, does not reveal evidence to substantiate the misconduct claims. The allegations are therefore subject to dismissal as frivolous and unsupported by evidence that would raise an inference that misconduct has occurred.² 28 U.S.C. § 352(b)(1)(A)(iii); Rule 11(c)(1)(C), (D), Rules for Judicial-Conduct and Judicial-Disability Proceedings.

¹ Complainant requests vacatur of various rulings by the Subject Judge. Such substantive legal relief is not available in a misconduct proceeding. See Rules 11 & 21, Rules for Judicial-Conduct and Judicial-Disability Proceedings.

² Complainant claims that the Subject Judge violated the Code of Conduct for United States Judges as well as the Rules for Judicial-Conduct and Judicial-Disability Proceedings. The Code of Conduct is designed to provide guidance to judges, but is not a set of disciplinary rules. “Ultimately, the responsibility for determining what constitutes misconduct under the statute is the province of the judicial council of the circuit subject to such review and limitations as are ordained by the statute and by these Rules.” Commentary on Rule 3, 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: April 20, 2023)

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: April 20, 2023