

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. Nos. 03-22-90112, 03-22-0116

IN RE: COMPLAINT OF JUDICIAL MISCONDUCT
OR DISABILITY

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

MEMORANDUM OPINION

(Filed: March 2, 2023)

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 Circuit 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 filed a pro se employment discrimination complaint that was assigned to Subject Judge I. Subject Judge I dismissed the complaint with prejudice for failure to

state a claim. Complainant appealed. A panel of the Court of Appeals including Subject Judge II affirmed the judgment. Complainant sought rehearing, which was denied.

Complainant alleges in this complaint of judicial misconduct that, by dismissing his discrimination complaint and appeal, the Subject Judges abused their discretion, violated Complainant's Seventh Amendment right to a jury trial, and failed to adhere to the Federal Rules of Civil Procedure. Complainant further alleges that the Subject Judges are biased against him based on his pro se status. According to Complainant, his legal position was so strong that the Subject Judges must have "misrepresented both facts and law" to reach their rulings. Complainant contends that the Subject Judges' rulings are "far afield of precedent and legal code and rendered with such an egregious violation of fundamental rights" that they "far exceed" a ruling with which he merely disagrees and therefore rise to the level of judicial misconduct.¹

Because Complainant's allegations challenge rulings rendered by the Subject Judges in the course of Complainant's civil action, the 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."). Complainant unsuccessfully appealed the dismissal of his complaint to the Court of

¹ Complainant also purports to seek reopening of his employment discrimination case pursuant to Federal Rule of Civil Procedure 60(b). This administrative matter is not, however, an appropriate forum in which to seek such relief. No action will be taken on the motion in this opinion. If Complainant wishes to file a motion to reopen, he must do so in the context of that case in which he desires that relief.

Appeals and petitioned for rehearing by the en banc court. This administrative proceeding does not provide yet another opportunity for substantive review of these judicial 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, misrepresentation, and other wrongdoing are entirely unsubstantiated. The record does not provide support for these claims 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).

s/ Michael A. Chagares
Chief Judge

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ORDER

(Filed: March 2, 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)(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 2, 2023