

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. No. 03-23-90039

IN RE: COMPLAINT OF JUDICIAL MISCONDUCT
OR DISABILITY

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

MEMORANDUM OPINION

(Filed: July 11, 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 Magistrate 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 pled guilty to bank fraud in 2016 and is subject to a writ of continuing garnishment. In 2022, the Subject Judge issued an order directing Complainant to comply

with the writ.¹ Complainant complains that the Subject Judge presided over a garnishment hearing in 2022 even though the Subject Judge served as a partner at a law firm that he contends “served concurrently as general counsel” to Complainant and general counsel to the victim in the criminal prosecution. Complainant states that the Subject Judge was “privileged to information and documents” and “should have immediately recused herself” due to conflicts of interest.

Complainant plainly seeks to collaterally attack the Subject Judge’s decisions in the present administrative proceedings, including the Subject Judge’s putative failure to recuse. Merits related allegations, however, are not cognizable under the Judicial Conduct and Disability Act. 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.*”) (emphasis added); see also 28 U.S.C. § 352(b)(1)(A)(ii); Rule 11(c)(1)(B), Rules for Judicial-Conduct and Judicial-Disability Proceedings. Accordingly, these allegations are subject to dismissal.

In any event, the underlying record reflects that the recusal question was addressed previously in 2016 during a telephonic conference call with counsel for the government and Complainant’s then-counsel. The issue of the Subject Judge’s former law firm was raised, and the minutes reflect that the Subject Judge declined to recuse because she did

¹ Complainant has filed an appeal with the District Court that remains pending at this time. I express no opinion as to the merits of that appeal. Complainant also has appeals pending in the Third Circuit and I express no opinion as to the merits of those appeals in the present administrative matter.

not work on the case in question and had already been appointed to the bench during the relevant time frame. The minutes further indicate that all sides “agreed.” Accordingly, the complaint is subject to dismissal on the additional grounds that Complainant’s allegations are 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)(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: July 11, 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: July 11, 2023