

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

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J.C. Nos. 03-23-90011, 03-23-90012, 03-23-90013, 03-23-90014,  
03-23-90017, 03-23-90018, 03-23-90019

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IN RE: COMPLAINTS OF JUDICIAL MISCONDUCT  
OR DISABILITY

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

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MEMORANDUM OPINION

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(Filed: April 26, 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 (“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, a medical doctor, filed a pro se civil complaint concerning the revocation of his medical license and his license to distribute and prescribe controlled substances. The matter initially was filed outside of this Circuit but was transferred to Subject Judge I. Subject Judge I ultimately dismissed Complainant's third amended complaint with prejudice. Complainant did not appeal but, nearly a year and a half after entry of judgment, filed a document titled, "Complaint for Contempt." Subject Judge I has not acted upon that document.

Complainant's first complaint of judicial misconduct concerns Subject Judge I. Complainant alleges that Subject Judge I was "unable to manage" the civil proceeding, issued "flawed" orders, including the denial of a request for a hearing and the entry of judgment against Complainant, and failed to address the "Complaint for Contempt." Complainant demands that Subject Judge I "must face judicial discipline."

Complainant's second and third complaints of judicial misconduct concern appeals taken in a separate, unrelated civil proceeding concerning Complainant's efforts to regain custody of his two children, who allegedly reside with their mother in another country. Complainant first appealed the dismissal of that matter for failure to pay the filing fee. The appellate panel, comprised of Subject Judges II, III, and IV, affirmed the District Court's judgment. Complainant subsequently amended the complaint in the District Court, and the presiding District Judge dismissed the case for lack of subject matter jurisdiction. Complainant took a second appeal and the appellate panel again affirmed the

judgment. Complainant alleges in his complaints of judicial misconduct that Subject Judges II, III, and IV “ruled without details” and “failed to even allow a live hearing.”

It is apparent that Complainant’s allegations in all three complaints are intended to challenge the merits of rulings by the four Subject Judges, including decisions such as whether to hold evidentiary hearings and the entry of judgment. All such allegations are merits related. Merits-related allegations do not constitute cognizable misconduct.<sup>1</sup> 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’s 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.

It does not appear that Complainant has raised any non-merits-related allegations of misconduct. To the extent he has, the record does not reveal evidence to substantiate any misconduct claims. Any 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); Rule 11(c)(1)(C), (D), Rules for Judicial-Conduct and Judicial-Disability Proceedings.

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<sup>1</sup> Complainant’s allegation that Subject Judge I “failed to address” his post-judgment “Complaint of Contempt” is akin to an allegation of delay in that it challenges the correctness of an official action by Subject Judge I. See Rule 4(b)(2) and Commentary on Rule 4, Rules for Judicial-Conduct and Judicial-Disability Proceedings. In the absence of an allegation of improper motive, such an allegation does not constitute cognizable misconduct. See id.

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

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(Filed: April 26, 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](http://www.ca3.uscourts.gov).

s/ Michael A. Chagares  
Chief Judge

Dated: April 26, 2023