

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. No. 03-23-90021

IN RE: COMPLAINT OF JUDICIAL MISCONDUCT
OR DISABILITY

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

MEMORANDUM OPINION

(Filed: May 3, 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 is a defendant in a criminal proceeding that was referred to the Subject Judge. Complainant alleges that, before he was indicted, the Subject Judge received and considered an improper ex parte motion from the prosecutor. The motion

allegedly resulted in the Subject Judge denying Complainant a timely preliminary hearing and illegally detaining him. Complainant further alleges that the prosecutor intentionally effected improper service of the motion on defense counsel and provided false reasons in the motion to justify the delay of the preliminary hearing.¹ Complainant claims he should have been released and that his detention amounts to a kidnapping.

Complainant's counsel filed a motion to dismiss the indictment raising many of these issues, including the alleged improper service and delay. The presiding District Judge, who is not a Subject Judge in this misconduct proceeding, denied the motion to dismiss. Complainant eventually entered a guilty plea. He recently has filed a motion seeking to withdraw the guilty plea. The criminal matter remains ongoing.

It is apparent that Complainant is attempting to collaterally challenge official judicial actions, including the timing of his preliminary hearing and the detention order. These 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."). Indeed, as noted, Complainant's counsel already has challenged these rulings in the course of the criminal proceeding. "The

¹ Complainant presents allegations of misconduct by the prosecutor as well as by his own counsel, whom he accuses of ineffective assistance. These attorneys are not federal judges and therefore are not covered by the Judicial Conduct and Disability Act. See 28 U.S.C. §§ 351, 352(b)(1)(A)(i); Rule 1, Rules for Judicial-Conduct and Judicial-Disability Proceedings. Allegations implicating the prosecutor and defense counsel are not cognizable in this judicial misconduct proceeding and will not be addressed in this opinion.

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 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.

Complainant's claims of kidnapping and related mistreatment are premised on his disagreement with the merits of the Subject Judge's rulings and, considered independently of the merits, are entirely lacking in factual support. The allegation of improper ex parte communication is also unsupported, as Complainant acknowledges that the prosecutor's office served defense counsel with the motion in question. Complainant claims that the service method was improper and that his counsel never received the motion, but these alleged flaws are irrelevant to this analysis because, from the Subject Judge's perspective, the motion was shared with the opposing party and therefore does not constitute "engaging in improper ex parte communications with parties or counsel for one side in a case" as described in Rule 4(a)(1)(C), Rules for Judicial-Conduct and Judicial-Disability Proceedings.² Complainant's allegations are therefore subject to dismissal as

² Complainant claims 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

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)(i), (ii), and (iii).

s/ Michael A. Chagares
Chief Judge

limitations as are ordained by the statute and by these Rules.” Commentary on Rule 3, Rules for Judicial-Conduct and Judicial-Disability Proceedings.

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ORDER

(Filed: May 3, 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: May 3, 2023