

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. No. 03-23-90024

IN RE: COMPLAINT OF JUDICIAL MISCONDUCT
OR DISABILITY

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

MEMORANDUM OPINION

(Filed: August 1, 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”). 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 civil action concerning her prior employment. The Subject Judge issued an order transferring the matter to a venue outside of this Circuit and closed the case. Complainant continued to file post-transfer motions and other

submissions, including a motion for the Subject Judge's recusal. The Subject Judge summarily denied the motions and ordered that further filings would not be considered in the closed case.

In this complaint of judicial misconduct, Complainant alleges that the Subject Judge should have recused himself due to bias. Complainant specifically alleges that, before taking the bench, the Subject Judge practiced law at the law firm that represents the defendants in Complainant's case. Complainant additionally alleges that the Subject Judge is guilty of embezzlement and misappropriation because Complainant allegedly sent the District Court Clerk's Office a document with pre-paid postage in the form of three postage stamps but did not receive a mailing in return.

Most of Complainant's allegations attempt to collaterally challenge official judicial actions, including the Subject Judge's denial of her recusal motion and the decision to transfer Complainant's case to a new venue. Such 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."). "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 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 allegations concerning the Subject Judge's alleged prior employment are entirely unsupported. Publicly available records reflect that the Subject Judge was never employed by the law firm that represents the defense in Complainant's civil action. Complainant has not provided any credible evidence to the contrary. This claim is 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.

Complainant's embezzlement claim is also baseless. Complainant's allegation that she mailed three postage stamps to the District Court and did not receive a mailing in return does not reasonably establish that the Subject Judge engaged in any improper actions. The District Court Clerk's Office — not the Subject Judge — is charged with mailing court filings to pro se litigants.¹ There is no evidence that the Subject Judge was involved in any way with handling Complainant's pre-paid postage. Complainant's allegation is 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.

¹ Clerk's Office employees are not federal judges and therefore are not subject to the Judicial Conduct and Disability Act. See 28 U.S.C. § 351(d); Rule 1(b), Rules for Judicial-Conduct and Judicial-Disability Proceedings. To the extent the complaint implies misconduct on the part of Clerk's Office employees or others, such allegations will not be addressed in this opinion. See 28 U.S.C. §§ 351, 352(b)(1)(A)(i).

Based on the foregoing, this complaint will be dismissed pursuant to 28 U.S.C. § 352(b)(1)(A)(i), (ii), and (iii).²

s/ Michael A. Chagares
Chief Judge

² Complainant filed several unsworn supplements to the complaint. The supplements were reviewed under Rule 5(a) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings and do not set forth reasonable grounds for inquiry into whether misconduct has occurred.

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ORDER

(Filed: August 1, 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: August 1, 2023