

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. Nos. 03-23-90040, 03-23-90041

IN RE: COMPLAINT OF JUDICIAL MISCONDUCT
OR DISABILITY

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

MEMORANDUM OPINION

(Filed: September 6, 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 Magistrate 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, a state prisoner, filed a petition for a writ of habeas corpus in 2010. The petition was assigned to Subject Judge I, who referred it to Subject Judge II. Subject

Judge II issued a detailed Report & Recommendation (“R&R”) recommending that the petition be denied as procedurally defaulted or, in the alternative, as meritless.

Complainant filed objections. Subject Judge I overruled Complainant’s objections, adopted the R&R, and denied the habeas petition. Complainant appealed, and the Court of Appeals denied a certificate of appealability. Complainant later moved to vacate the judgment and for the Subject Judges’ recusal. Subject Judge II recommended denying the motions and Subject Judge I did so. Complainant appealed that decision as well; a certificate of appealability was again denied.

Complainant more recently filed two additional proceedings, both of which were assigned to Subject Judge I and referred to Subject Judge II. The first was a habeas petition; Subject Judge II denied Complainant’s recusal motion and issued an R&R recommending that the petition be dismissed as an unauthorized second or successive petition. The petition remains pending before Subject Judge I. Complainant’s second matter was a civil rights complaint against the state court judge who presided over his criminal proceeding. Subject Judge II issued a Report and Recommendation (“R&R”) recommending that the complaint be dismissed for failure to state a claim. After considering Complainant’s objections, Subject Judge I adopted the R&R and dismissed the complaint with prejudice. Complainant’s appeal is pending.

This complaint of judicial misconduct primarily concerns Subject Judge II,¹ who Complainant alleges has treated him in a demonstrably egregious and hostile manner. Complainant claims that, in the R&R recommending denial of the first habeas petition, Subject Judge II “became an active advocate for the states’ attorney” by mis-describing details of Complainant’s crime, by erroneously concluding that his habeas claims were procedurally defaulted, and by denying his recusal motion. Complainant also complains that Subject Judge II wrongfully denied his more recent recusal motion and “managed to . . . take over” his civil rights action. Complainant alleges that Subject Judge II’s decisions demonstrate that he harbors a “growing animus” against Complainant, has acted in a manner “designed to deprive [him] of all federal relief,” and “literally hates [him].”²

To the extent Complainant’s allegations attack the merits of judicial rulings, including the orders denying recusal, the allegations are merits related. Merits-related allegations 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

¹ Complainant states that Subject Judge I “is listed in that he merely co-signed the decisions.” Because complainant has not identified any allegation of misconduct on the part of Subject Judge I, the complaint against Subject Judge I will be dismissed 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.

² Complainant also filed an unsworn supplement to the complaint alleging, among other things, that he suspects the Subject Judge of having engaged in improper ex parte communications. The supplement was reviewed under Rule 5(a) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings and does not set forth reasonable grounds for inquiry into whether judicial misconduct occurred.

recuse.”). Many of Subject Judge II’s decisions have been subject to appellate review, and this administrative proceeding does not afford Complainant an additional opportunity to seek substantive review of the merits of such 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). All such merits related allegations are therefore 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 non-merits-related allegations of personal animus and hostility lack evidentiary support. It is apparent that Complaint’s allegations rest solely upon his disagreement with the merits of judicial rulings. A careful review of the record in Complainant’s several proceedings does not substantiate the claims of demonstrably egregious and hostile treatment. These claims 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.

Based on the foregoing, the 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: September 6, 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.

s/ Michael A. Chagares
Chief Judge

Dated: September 6, 2023