

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. No. 03-23-90062

IN RE: COMPLAINT OF JUDICIAL MISCONDUCT
OR DISABILITY

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

MEMORANDUM OPINION

(Filed: September 26, 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, through counsel, filed a sexual harassment and discrimination suit against a federal agency. The Subject Judge granted summary judgment to the defendant

and closed the case. Complainant appealed, and the Court of Appeals affirmed the judgment.

In this complaint of judicial misconduct, Complainant alleges that, in the presence of Complainant and his counsel, the Subject Judge made a comment that Complainant characterizes as “sexually inappropriate” and stated that government officials are “allowed to” lie under oath. Complainant further alleges that the Subject Judge erroneously determined that Complainant’s sexual assault allegation was not severe. Complainant claims these actions demonstrate that the Subject Judge “operated outside of Federal Law and Procedures.”¹

Complainant attempts to call into question the Subject Judge’s determination as to the severity of his sexual assault allegation. Such an allegation is merits related and does 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.”). Complainant already has obtained review of that determination in the course of his appeal of the judgment entered in his case. “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

¹ Complainant also presents allegations of misconduct concerning government attorneys, agency officials, and others. None of these individuals are federal judges and therefore none of them are 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. These non-cognizable allegations will not be addressed in this opinion.

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 allegation is 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 allegations concerning two comments he attributes to the Subject Judge – that Complainant “shouldn't have stuck [his] pen in the company ink” and that government officials are “allowed to” lie under oath – are unsubstantiated. Complainant provides no information about when these purported statements were made. A review of the record has been conducted and reveals that one hearing was held before the Subject Judge, to address the motion for summary judgment. That hearing transcript appears on the public docket, and a careful review does not reflect any statements by the Subject Judge that corroborate Complainant's allegations. Additionally, while Complainant states that counsel was present for the allegedly inappropriate comments, counsel never presented any concerns about the Subject Judge's conduct either to the Subject Judge directly or to the Court of Appeals. The claim is thus 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, 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

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ORDER

(Filed: September 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 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: September 26, 2023