

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. Nos. 03-23-90063, 03-23-90084

IN RE: COMPLAINT OF JUDICIAL MISCONDUCT
OR DISABILITY

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

MEMORANDUM OPINION

(Filed: October 4, 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”). For the reasons that follow, 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 is a defendant in a criminal case that is assigned to the Subject Judge. He (with the assistance of counsel) has challenged his physical and mental fitness to stand trial. Complainant has also sought to dismiss his attorneys and have new counsel

appointed. At a status conference in June 2023, the Subject Judge ordered a physician evaluation of Complainant and declined to appoint new counsel for Complainant at that time. In July, Complainant filed an unopposed motion to continue the trial, which the Subject Judge granted.

The Complainant's first judicial misconduct complaint was received on August 6. He argued that the Subject Judge "renege" the order from the June status conference for a medical evaluation, violated his constitutional rights as a disabled person, and forced him to continue with his present attorneys whom he alleges have "unclean hands." Complainant claimed that the Subject Judge's "excessively cruel, inhumane & exceedingly unusual prejudicial behavior" is "causing/leading to, sure and certain catastrophic permanent bodily injury, paralysis and/or death to defendant." Complainant submitted a second complaint in September echoing these same points and maintaining that the Subject Judge is "railroading" the defendant, and that he fears the Subject Judge will take retaliatory action against him, like issuing a bench warrant.

Despite his characterization of the Subject Judge's rulings as "prejudicial," "cruel," and the like, Complainant's submissions do not allege any actionable misconduct. He referenced several events and filings on the District Court docket, including the August scheduling conference, and he submitted documents as exhibits to his misconduct complaints, all of which have been reviewed. No malicious or mendacious behavior is evident anywhere in these documents or events. Thus, to the extent that Complainant has lodged accusations of misconduct, they are subject to dismissal as frivolous and

unsupported by any evidence that would raise an inference that misconduct occurred. See 28 U.S.C. § 352(b)(1)(A)(iii); Rule 11(c)(1)(C), (D), Rules for Judicial-Conduct and Judicial Disability Proceedings.

In addition, the complaints are otherwise subject to dismissal because they contain merits-related challenges. See 28 U.S.C. § 352(b)(1)(A)(ii); Rule 4(b)(1), 11(c)(1)(B), Rules for Judicial-Conduct and Judicial-Disability Proceedings. The District Court docket reflects that Complainant’s criminal case is progressing, and he clearly disagrees with certain recent orders issued in the case. But those disagreements do not belong in a judicial misconduct proceeding and they are not cognizable under 28 U.S.C. § 351(a). 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”). Further, a proceeding under the Judicial Conduct and Disability Act does not provide a forum for an interlocutory-type appeal, as Complainant appears to seek, “[n]or 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).

Finally, to the extent that Complainant complains about the quality of his legal representation, those concerns are not cognizable in the judicial misconduct process. The attorneys are not judges, and only “covered judges” as defined in Rule 1(b) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings are subject to the Act’s provisions. See id.; 28 U.S.C. § 351(b)(1)(A)(i).

For these reasons, the complaint will be dismissed pursuant to 28 U.S.C.
§ 352(b)(1)(A)(i), (ii), and (iii).

Michael A. Chagares
Chief Judge

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ORDER

(Filed: October 4, 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)(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.

Michael A. Chagares
Chief Judge

Dated: October 4, 2023