

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. No. 03-23-90081

IN RE: COMPLAINT OF JUDICIAL MISCONDUCT
OR DISABILITY

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

MEMORANDUM OPINION

(Filed: November 2, 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 that follow, 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 federal habeas petition in 2017, which was denied by the District Court. On appeal, the Court of Appeals reversed and remanded with instructions to conditionally issue the writ. On remand, the Subject Judge ordered Complainant’s

release unless the Commonwealth of Pennsylvania reinstated his right of appeal within 90 days. In this judicial misconduct complaint, Complainant contends that the Commonwealth did not restore his rights within the 90-day time frame, and his attempts to obtain relief in the District Court “were obstructed in an unfair, and prejudicial manner.”

Complainant’s allegations primarily challenge the merits of judicial rulings by the Subject Judge and, therefore, are merits related. Merits-related allegations do not constitute cognizable misconduct. See 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.”); see also In re Memorandum of Decision of Judicial Conference Committee on Judicial Conduct and Disability, 517 F.3d 558, 561 (U.S. Jud. Conf. 2008) (“The Act is intended to further ‘the effective and expeditious administration of the business of the courts.’ It would be entirely contrary to that purpose to use a misconduct proceeding to obtain redress for—or even criticism of—the merits of a decision with which a litigant or misconduct complainant disagrees.”). Moreover, these proceedings do not provide a means to appeal the Subject Judge’s decisions. See id. Complainant has lodged an appeal from the District Court judgment that is presently pending in the Court of Appeals. 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.

To the extent that he alleges that the District Court proceedings were “unfair” and that the Subject Judge “conspired with the state to make its particular ruling,” Complainant’s claims will be dismissed as frivolous and unsupported by evidence sufficient to 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. Despite his suggestion to the contrary, the timing of when motions and correspondence were docketed, and the District Court’s ruling in response to his Federal Rule of Civil Procedure 59(e) motion, do not indicate unfair treatment by the Subject Judge or “ex parte” communications with the state. Accordingly, his claims alleging impropriety or prejudice are not substantiated, and, like the others, are subject to dismissal.

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

Michael A. Chagares
Chief Judge

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ORDER

(Filed: November 2, 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)(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: November 2, 2023