

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. No. 03-23-90094

IN RE: COMPLAINT OF JUDICIAL MISCONDUCT
OR DISABILITY

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

MEMORANDUM OPINION

(Filed: January 4, 2024)

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 Magistrate Judge (“Subject Judge”). For the following reasons, 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 prisoner civil rights action, which was assigned to the Subject Judge. The Subject Judge granted Complainant’s motion for leave to proceed in forma pauperis. After Complainant failed to comply with certain procedural rules, the District

Court marked the case closed but notified Complainant that he could reopen the case if the deficiencies were corrected within thirty days. He failed to take corrective action. Nine months later, the District Court reminded Complainant of the deficiencies and provided another thirty-day window to comply. He again failed to cure the deficiencies, and the matter has remained closed. Complainant then filed the misconduct complaint.

In this proceeding, Complainant expresses disagreement with the closure of his District Court matter. Because the allegations here relate to the Subject Judge's procedural ruling in that case, his claims are not cognizable under 28 U.S.C. § 351(a) and are subject to dismissal. See 28 U.S.C. § 352(b)(1)(A)(ii); Rules 4(b)(1) ("Cognizable misconduct does not include an allegation that calls into question the correctness of a judge's ruling"), 11(c)(1)(B), Rules for Judicial-Conduct and Judicial-Disability Proceedings. Moreover, a proceeding under the Judicial Conduct and Disability Act does not provide a forum to appeal the dismissal or otherwise collaterally attack the Subject Judge's rulings. See 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 also states that the Subject Judge sent a "false" letter. To the extent that his statement alleges impropriety by the Subject Judge, that contention will be dismissed because it is frivolous and unsupported by evidence raising an inference of

misconduct. See Rule 11(c)(1)(C), (D), Rules for Judicial-Conduct and Judicial-Disability Proceedings; 28 U.S.C. § 352(b)(1)(A)(iii).¹

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

Michael A. Chagares

Chief Judge

¹ Complainant submitted additional correspondence in which he made unsworn allegations concerning his attorneys, prison grievances, and his underlying criminal conviction proceedings. These allegations have been considered under Rule 5 of the Rules for Judicial-Conduct and Judicial-Disability Proceedings. I decline to identify a complaint based on these allegations because they are merits-related, unsupported, frivolous, and otherwise not cognizable under the Act.

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ORDER

(Filed: January 4, 2024)

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: January 4, 2024