

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. No. 03-23-90103

IN RE: COMPLAINT OF JUDICIAL MISCONDUCT
OR DISABILITY

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

MEMORANDUM OPINION

(Filed: January 10, 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 District 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).

Approximately twenty years ago, a former employee sued Complainant and a company he was associated with in state court. Complainant removed the matter to federal court, where it was assigned to the Subject Judge. After concluding that the

District Court lacked subject matter jurisdiction, the Subject Judge remanded the case to state court pursuant to 28 U.S.C. § 1447(c), and the case was closed. Complainant thereafter faxed two letters to the Subject Judge, in which the Complainant apparently alleged that the plaintiff and his girlfriend had improper contact with a law clerk, including contact through a pedophile web site. The Subject Judge accordingly issued an order requiring Complainant to show cause why he should not be held in criminal contempt. The Subject Judge ultimately dismissed the show cause order.¹

These events comprised the basis of Complainant's prior judicial misconduct complaint against the Subject Judge at J.C. No. 05-27. Complainant claimed that the Subject Judge's issuance of the show cause order suggested a disability, that the judge conducted an improper independent investigation of the jurisdiction issue, and that he had inappropriate *ex parte* contact with the plaintiff or plaintiff's counsel. These claims were determined to be merits-related, frivolous, and unsupported, and the misconduct complaint was dismissed. See Memorandum Opinion and Order entered July 15, 2005, in J.C. No. 05-27.

In his new judicial misconduct complaint against the Subject Judge, Complainant reiterates his prior claim of inappropriate *ex parte* contact and now asserts that the Subject Judge remained involved in the civil plaintiff's legal affairs after the remand to state court.

¹ The remanded civil matter was eventually resolved in arbitration, where the plaintiff prevailed on a whistleblowing claim. Later, in 2015 and 2016, Complainant published blog posts disparaging the arbitration and the plaintiff. Plaintiff sued Complainant and his associated company for retaliation in a different federal district court. After trial, a jury awarded the plaintiff \$1 million in damages. The presiding Court of Appeals affirmed the judgment.

In particular, Complainant maintains that the Subject Judge improperly contacted the arbitrator and the federal district judges (located in another district) who have presided over the plaintiff's 2015 civil action against Complainant. He claims that the Subject Judge financed the plaintiff's legal actions and received a quarter-share of the plaintiff's \$1 million civil jury award. Complainant further "presume[s]" that the Subject Judge took senior status "immediately after the judgment to immunize himself from a loss of his pension should the above been discovered sooner."

First, to the extent that Complainant seeks to collaterally attack the dismissal of his prior judicial misconduct complaint by reiterating stale claims of the Subject Judge's alleged improper behavior, the present complaint will be dismissed as merits-related. See 28 U.S.C. § 352(b)(1)(A)(ii) (providing for dismissal where the complaint is "directly related to the merits of a decision or procedural ruling"); see also 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"). Complaints challenging "the correctness of a chief judge's determination to dismiss a prior misconduct complaint," are included in the Act's bar against misconduct complaints that relate to the merits of a judge's "decision or procedural ruling." Commentary on Rule 4, Rules for Judicial-Conduct and Judicial-Disability Proceedings.

Moreover, Complainant has provided no evidentiary support for his "amplified" claims of improper *ex parte* contact against the Subject Judge, and they are subject to dismissal as unsubstantiated and frivolous. See Rule 11(c)(1)(C), (D), Rules for Judicial-

Conduct and Judicial-Disability Proceedings; 28 U.S.C. § 352(b)(1)(A)(iii). He states that he has “confirm[ed]” that the Subject Judge “reached out” to the arbitrator and “influenced” two federal district judges, but he does not explain how he “confirm[ed]” it, nor does he offer any evidence to support his allegations. Likewise, according to his complaint, the apparent basis for his assertion that the Subject Judge financed the civil plaintiff’s legal actions is that the civil plaintiff’s counsel “intimated” it was so. Complainant provides no information or evidence outside of his own statement, and his references to the record in the 2015 case do not substantiate his points. Accordingly, the claims will be dismissed because they are frivolous and lack sufficient evidence to raise a reasonable inference that misconduct occurred. See 28 U.S.C. § 352(b)(1)(A)(iii).

Finally, Complainant suggests that several adverse rulings made by the district judge in the 2015 matter may be attributed to the Subject Judge’s alleged influence.² At bottom, Complainant’s claim expresses disagreement with rulings in the 2015 case, and construed as such, it is merits-based and non-cognizable under the Act. 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. To the extent his argument on this score does not concern the merits, as I have already noted above, Complainant has failed to provide evidence of the Subject Judge’s purported interference and the record lends none; Complainant’s

² This allegation appears directed at the named Subject Judge and not against other federal district judges presiding in the 2015 civil matter, whom Complainant did not name as subjects of his complaint. In any event, an allegation against a judge from outside the Third Circuit will not be addressed here; such a claim must be filed in a complaint with the circuit clerk in the jurisdiction where the subject judge serves. Rule 7(a)(1), Rules for Judicial-Conduct and Judicial-Disability Proceedings.

argument is thus also subject to dismissal as frivolous and unsupported. See Rule 11(c)(1)(C), (D), Rules for Judicial-Conduct and Judicial-Disability Proceedings.

For these reasons, 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: January 10, 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.

s/ Michael A. Chagares
Chief Judge

Dated: January 10, 2024