

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. Nos. 03-23-90114, 03-23-90115, 03-23-90121

IN RE: COMPLAINTS OF JUDICIAL MISCONDUCT
OR DISABILITY

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

MEMORANDUM OPINION

(Filed: January 22, 2024)

PRESENT: CHAGARES, Chief Judge.

The present complaints were filed under the Judicial Conduct and Disability Act 28 U.S.C. §§ 351-64, against a United States District Judge (“Subject Judge I”) and a United States Magistrate Judge (“Subject Judge II”).¹ For the following reasons, 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

¹ On December 11, 2023, Complainant was ordered to show cause why he should not be enjoined under Rule 10 of the Rules for Judicial-Conduct and Judicial-Disability Proceedings from filing further complaints of judicial misconduct or disability under the Judicial Conduct and Disability Act with the Judicial Council of the Third Circuit. As indicated in that Order, pending determination of that matter, his new complaints of judicial misconduct will not be accepted for filing, but the judicial misconduct complaints here were already pending before December 11 and were unaffected by that Order.

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's misconduct complaints relate to two civil lawsuits he filed in District Court. The cases were assigned to other judges but reassigned in May 2023 to Subject Judge I and Subject Judge II. Counsel was appointed to help draft a fourth amended complaint in one of the lawsuits, but he soon moved to withdraw from the case, arguing that the representation would violate state rules of professional conduct, that certain claims or defenses espoused by Complainant were clearly unsupported by fact and law, and that the representation had been made unreasonably difficult by Complainant, among other reasons. Counsel set forth additional details supporting his motion in a separate declaration and asked that it be placed under seal to protect attorney client-privileged information, but Complainant opposed the request to seal. Ultimately, Subject Judge II granted counsel's motion to withdraw.² Complainant then submitted the two misconduct complaints addressed in this opinion. In November 2023, Complainant's lawsuits were reassigned to a new district judge.

Complainant has filed multiple complaints of judicial misconduct in the past, including three against Subject Judge I and two against Subject Judge II.³ In fact, the first

² The Order granting the motion to withdraw did not address the sealed status of counsel's declaration, but it reflected that all submitted papers and opposition had been considered. It does not appear that Complainant asked for reconsideration or clarification of any issue; rather, he filed a fourth amended complaint pursuant to the Order.

³ Complainant named Subject Judges I and II in misconduct complaints in J.C. Nos. 03-23-90060, 03-23-90061, 03-23-90088, 03-23-90092, 03-23-90093. Those complaints, as

misconduct complaint here (J.C. Nos. 03-23-90114 and 03-23-90115), naming both Subject Judges I and II, is essentially a duplicate of a previously-dismissed misconduct complaint lodged against the same judges. See generally J.C. Nos. 03-23-90092, 03-23-90093. This time, however, Complainant attached to the submitted complaint a copy of the document he filed in the District Court in opposition to the motion to seal. As related above, by the time he submitted this misconduct complaint, Subject Judge II had already granted counsel’s motion to withdraw and the “original” misconduct complaint had been dismissed. Accordingly, it is unclear whether Complainant submitted the copy of his already-dismissed complaint with the opposition document attached in order to seek reconsideration of or collaterally attack the dismissed judicial misconduct complaint, or to obtain interlocutory review of Subject Judge II’s decision to grant counsel’s motion to withdraw.⁴ In either case, this misconduct complaint must be dismissed because his arguments would plainly challenge the merits of judicial rulings, and they do not constitute cognizable conduct under the Act. 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”); Rules 4(b)(1), 11(c)(1)(B) Rules for Judicial-Conduct and Judicial-Disability Proceedings; see also Commentary on Rule 4 (“The phrase ‘decision or procedural ruling’ is not limited to rulings issued in deciding Article III cases . . . a

well as his judicial misconduct complaints in J.C. Nos. 03-21-90014, 03-22-90046, 03-22-90047, 03-22-90048, 03-22-90049, 03-22-90050, and 03-23-90059, were dismissed as frivolous, unsubstantiated, merits-related, and otherwise not cognizable under the Act.

⁴ Complainant filed a petition for review of the dismissed complaint, which the Judicial Council denied.

complaint challenging the correctness of a chief judge’s determination to dismiss a prior misconduct complaint would be properly dismissed as merits-related . . .”).

As for the second misconduct complaint (J.C. No. 03-23-90121) naming only Subject Judge II, Complainant expressly challenges Subject Judge II’s decision granting counsel’s withdrawal motion and failing to unseal counsel’s supporting declaration.⁵ These allegations are subject to dismissal because, as noted above, they challenge the correctness of Subject Judge II’s rulings. 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. Further, he claims that his filings were not given due consideration in the rulings on those matters, yet that argument is premised on his opinion as to what the outcome on those issues should have been. This merits-related and non-cognizable ground will also be dismissed. See id.

Finally, to the extent that Complainant asserts that Subject Judge II had “undisclosed associations and potential bias,” he does not provide any evidence beyond his own innuendo in the misconduct complaint. A review of the underlying record reveals no such concerns. The allegations will be dismissed as frivolous and unsupported by evidence that would raise an inference that misconduct has occurred or that a disability exists. See 28 U.S.C. § 352(b)(1)(A)(iii); Rule 11(c)(1)(C), (D), Rules for Judicial-Conduct and Judicial-Disability Proceedings.

⁵ Although counsel is not formally named as a subject, Complainant cites his former lawyer’s questionable intentions as part of his grounds for the misconduct complaint docketed at J.C. No. 03-23-90121. His former counsel is not a federal judge and not subject to the Act, and the argument is not cognizable here. See 28 U.S.C. §§ 351, 352(b)(1)(A)(i); Rule 1, Rules for Judicial-Conduct and Judicial-Disability Proceedings. That ground will not be addressed in this opinion.

Based on the foregoing, these complaints will be dismissed pursuant to 28 U.S.C. § 352(b)(1)(A)(i), (ii), and (iii). Complainant is reminded that, pending a decision of the Judicial Council's Order to Show Cause of December 11, 2023, new complaints of judicial misconduct will not be accepted for filing.

Michael A. Chagares
Chief Judge

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ORDER

(Filed: January 22, 2024)

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: January 22, 2024