

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. No. 03-23-90124

IN RE: COMPLAINT OF JUDICIAL MISCONDUCT
OR DISABILITY

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

MEMORANDUM OPINION

(Filed: February 20, 2024)

PRESENT: JORDAN, Circuit Judge.¹

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).² 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,

¹ Acting pursuant to Rule 25(f), Rules for Judicial-Conduct and Judicial-Disability Proceedings (“If the chief judge is disqualified . . . those duties must be assigned to the most-senior active circuit judge not disqualified.”).

² On December 21, 2023, the Judicial Council of the Third Circuit entered an order enjoining Complainant 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. The judicial misconduct complaint here was pending before the initiation of the injunction process and was unaffected by that order.

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's most recent misconduct complaint alleges that the Subject Judge erroneously dismissed a civil lawsuit he filed in the District Court, and that the dismissal constitutes "prejudicial conduct" and fraud. He also appears to argue that the Subject Judge is biased because he was appointed by the current President of the United States.³

Complainant asserts that the Subject Judge should not have dismissed his complaint because he satisfied pleading requirements under Federal Rule Civil Procedure 8, had standing, and stated a claim for relief. But these are all legal arguments that are not cognizable in misconduct proceedings. See Rules 4(b)(1), 11(c)(1)(B), Rules for Judicial-Conduct and Judicial-Disability Proceedings. Likewise, Complainant cannot obtain review of the issues here because the misconduct procedure "is not designed as a substitute for, or supplement to, appeals or motions for reconsideration. Nor 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). These allegations will be dismissed. See 28 U.S.C. § 352(b)(1)(A)(ii).

³ Complainant also discusses the alleged conduct of many others who are not federal judges and therefore not covered by the Judicial Conduct and Disability Act. See 28 U.S.C. §§ 351, 352(b)(1)(A)(i); Rule 1, Rules for Judicial-Conduct and Judicial-Disability Proceedings. Those allegations are not cognizable in this proceeding and will not be addressed in this opinion.

Complainant contends that the Subject Judge’s dismissal order was fraudulent, prejudiced, and that it “silence[d] and chill[ed]” Complainant’s rights. He further suggests that the Subject Judge is biased because the current President, whom Complainant characterizes as a “Socialist,” appointed him. However, Complainant provides no evidence that the Subject Judge harbored prejudice, committed fraud, or conducted himself improperly in this case. The record has been reviewed, and there is no indication of any misconduct. Consequently, these arguments will be dismissed as frivolous and unsubstantiated. See 28 U.S.C. § 352(b)(1)(A)(iii); Rule 11(c)(1)(C), (D), Rules for Judicial-Conduct and Judicial-Disability Proceedings.

Accordingly, the complaint will be dismissed pursuant to 28 U.S.C. § 352(b)(1)(A)(i), (ii), and (iii). It is noted that the Judicial Council has enjoined Complainant pursuant to Rule 10 for abuse of the complaint procedure. This complaint is being considered because it was filed prior to entry of the injunction order. Complainant is reminded, however, that the Judicial Council’s order remains in effect and additional complaints of misconduct may not be filed.

Kent A. Jordan
Circuit Judge

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ORDER

(Filed: February 20, 2024)

PRESENT: JORDAN, Circuit 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)(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.

Kent A. Jordan
Circuit Judge

Dated: February 20, 2024