

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

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J.C. No. 03-23-90135

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IN RE: COMPLAINT OF JUDICIAL MISCONDUCT  
OR DISABILITY

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

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MEMORANDUM OPINION

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(Filed: February 14, 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 reasons discussed below, 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, a federal prisoner, alleges that, in 2018, an assistant United States attorney applied for an order permitting federal agents to conduct surveillance of a vehicle allegedly used by multiple individuals to commit drug offenses. The list of individuals set

forth in the application includes several people (including Complainant) who were incarcerated at the time, as well as one person who had passed away a few days before the application.<sup>1</sup> The Subject Judge signed the surveillance order, concluding there was probable cause to believe that Complainant and the other identified individuals had committed and were committing drug-related crimes and that information about the criminal conduct would be obtained through the requested surveillance.

In this complaint of judicial misconduct, Complainant alleges that the Subject Judge acted improperly by signing the surveillance order.<sup>2</sup> He claims the Subject Judge knew it would have been “impossible” for Complainant (as well as the other incarcerated individuals and the deceased individual) to be inside the vehicle identified in the application, and so signing the order “shows the subornation of perjury and fraud on his own court” as well as “reckless disregard for the truth.”

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<sup>1</sup> The agent’s detailed affidavit in support of the warrant application elaborated, among other things, that Complainant and other incarcerated individuals played a distribution role in the conspiracy from within prison walls, through physical mail and illicit cell phones. The affidavit explains that the investigation was aimed at identifying the members and scope of the organization in order to ultimately dismantle it.

<sup>2</sup> Complainant presents allegations against the Subject Judge and others in several supplements to the complaint that were not signed under penalty of perjury. The supplements have been reviewed under Rule 5(a) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings and do not set forth reasonable grounds for inquiry into whether judicial misconduct occurred. Additionally, Complainant presents allegations against an assistant United States attorney and a federal agent. Individuals who are not federal judges are not covered by the Judicial Conduct and Disability Act, so allegations against them are not cognizable in this proceeding. See 28 U.S.C. §§ 351, 352(b)(1)(A)(i); Rule 1, Rules for Judicial-Conduct and Judicial-Disability Proceedings. The allegations concerning non-covered individuals will not be addressed in this opinion.

Complainant is attempting to challenge the validity of the Subject Judge's surveillance order. Allegations related to the merits of a judicial ruling do not constitute cognizable misconduct. 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."). "The misconduct procedure [under the Judicial Conduct and Disability Act] 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). Complainant's allegations concerning the merits of the surveillance order are therefore 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.

Complainant's remaining allegations of misconduct, when considered apart from his merits-related claims, are unsubstantiated. There is, for instance, no evidence that the Subject Judge had been informed that one individual identified in the surveillance application had passed away shortly before the application was filed. Additionally, the Subject Judge's order indicates that information about crimes involving Complainant and other incarcerated individuals could be obtained through vehicle surveillance; the order does not state, as Complainant contends, that the incarcerated individuals were likely to be

personally present inside the vehicle. A careful review of the available record<sup>3</sup> reveals no evidence of perjury, fraud, or other misconduct. These claims are thus subject to dismissal as frivolous and unsupported by evidence that would raise an inference that misconduct has occurred. 28 U.S.C. § 352(b)(1)(A)(iii); Rule 11(c)(1)(C), (D), Rules for Judicial-Conduct and Judicial-Disability Proceedings.

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

s/ Michael A. Chagares  
Chief Judge

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<sup>3</sup> The proceeding before the Subject Judge is sealed. Complainant has, however, provided documentation in support of his complaint, including the surveillance application, supporting affidavit, and order. These documents have been carefully reviewed.

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ORDER

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(Filed: February 14, 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)(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](http://www.ca3.uscourts.gov).

s/ Michael A. Chagares  
Chief Judge

Dated: February 14, 2024