

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. No. 03-23-90142

IN RE: COMPLAINT OF JUDICIAL MISCONDUCT
OR DISABILITY

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

MEMORANDUM OPINION

(Filed: February 22, 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 state prisoner, filed a pro se civil rights action that was assigned to a now-retired District Judge.¹ After several years of proceedings, the District Judge granted summary judgment to the defendants. Complainant appealed. The Court of Appeals observed that the notice of appeal had been untimely filed but, because Complainant had filed motions that it construed as a request to re-open the time for appeal, the Court of Appeals entered a limited remand for the District Court to rule on that request. The matter was reassigned to the Subject Judge upon remand. The Subject Judge denied the request to re-open the time for appeal and Complainant's subsequent motion for reconsideration. The Court of Appeals then dismissed the appeal as untimely filed.

Complainant alleges in this complaint of judicial misconduct that the Subject Judge erred and was "complicit to the defendants" in denying the request to reopen the time for appeal. Complainant claims the Subject Judge misunderstood the meaning of the date stamps on the documents Complainant submitted and therefore reached an erroneous conclusion. Complainant alleges that, in his motion for reconsideration, he provided evidence to refute the Subject Judge's conclusion, but the Subject Judge "ignore[ed] the confuted [sic] facts."

¹ Complainant named the retired District Judge as a Subject Judge of this complaint of misconduct. Complainant was advised that complaints of misconduct may only be accepted for filing against judges currently holding an office described in Rule 1(b) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings. The complaint therefore was not accepted for filing as to the retired District Judge, see Rule 8(c), Rules for Judicial-Conduct and Judicial-Disability Proceedings, and the allegations against him will not be considered in this opinion.

Complainant clearly wishes to challenge the validity of the Subject Judge’s rulings. Such allegations are merits related and 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.”). Complainant did not appeal the rulings on the request for reopening and the motion for reconsideration. “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 are thus 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.

The record also does not substantiate Complainant’s claims that the Subject Judge was “complicit” with the defendants and “ignored” the evidence. These allegations 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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ORDER

(Filed: February 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 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.

s/ Michael A. Chagares
Chief Judge

Dated: February 22, 2024