

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

---

J.C. No. 03-23-90143

---

IN RE: COMPLAINT OF JUDICIAL MISCONDUCT  
OR DISABILITY

---

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

---

MEMORANDUM OPINION

---

(Filed: April 12, 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 pro se plaintiff, filed a complaint under the Americans with Disabilities Act alleging that his former employer retaliated against him for reporting legal violations. The matter was assigned to the Subject Judge. Complainant filed an amended

complaint and, at Complainant's request, the Subject Judge dismissed one defendant. The parties recently filed notice of consent to proceed before a magistrate judge, so the case was reassigned to the magistrate judge for all proceedings. The matter remains pending.

Complainant alleges in this complaint of misconduct that the Subject Judge made the following statement in a text-only order appearing on the docket: "The Court strongly recommends that Plaintiff review and strictly follow the Federal Rules of Civil Procedure before filing frivolous and misplaced pleadings that are unnecessarily taxing the Court's resources." Complainant claims that this statement constitutes "egregious and hostile" treatment and demonstrates retaliation. Complainant also seeks transfer to another court due to a purported conflict of interest because Complainant used to work with the parent of a Circuit Judge who is not named in this complaint, and also because Complainant once reported to the police a noise violation committed by a clerk of that Circuit Judge.<sup>1</sup>

Complainant has accurately quoted the language of the Subject Judge's admonition against frivolous and misplaced pleadings. This statement does not, without more, provide evidence of egregious and hostile treatment or retaliation. A careful review of the complete record in Complainant's case does not lend support to these claims. These allegations are therefore subject to dismissal as frivolous and unsupported by evidence

---

<sup>1</sup> Complainant additionally claims that the defendant's attorneys have a conflict of interest. Private attorneys 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 this purported conflict of interest therefore will not be addressed in this opinion.

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.

Complainant's claimed conflict of interest is also baseless. Even accepting Complainant's allegations as true, the personal interactions between Complainant and individuals who are related to or work with a Circuit Judge who is not named in his complaint does not give rise to a circumstance in which the Subject Judge's impartiality might reasonably be questioned. See Canon 3(C)(1)(d), Code of Conduct for United States Judges (requiring disqualification where "the judge or the judge's spouse, or a person related to either within the third degree of relationship" is a party to the proceeding).<sup>2</sup> These allegations are thus subject to dismissal because, even if true, they do not constitute conduct prejudicial to the effective and expeditious administration of the business of the courts, and also because they are 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)(A), (D), Rules for Judicial-Conduct and Judicial-Disability Proceedings.

Finally, to the extent Complainant is attempting to challenge the substance of the District Court's order, including any determination that Complainant's prior filings were frivolous or misplaced, such allegations are merits related and do not constitute cognizable misconduct. Rule 4(b)(1), Rules for Judicial-Conduct and Judicial-Disability Proceedings

---

<sup>2</sup> The Code of Conduct for United States Judges is designed to provide guidance to judges but is not a set of disciplinary rules. "Ultimately, the responsibility for determining what constitutes misconduct under the statute is the province of the judicial council of the circuit subject to such review and limitations as are ordained by the statute and by these Rules." Commentary on Rule 3, 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.”). Merits-related allegations are 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

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

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

---

J.C. No. 03-23-90143

---

IN RE: COMPLAINT OF JUDICIAL MISCONDUCT  
OR DISABILITY

---

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

---

ORDER

---

(Filed: April 12, 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: April 12, 2024