

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. No. 03-24-90001

IN RE: COMPLAINT OF JUDICIAL MISCONDUCT
OR DISABILITY

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

MEMORANDUM OPINION

(Filed: April 26, 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 Circuit 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, or the circuit judge in regular active service next senior in date of commission, 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. §§ 351(c), 352(b)(1)(A)(i)-(iii).

¹ Acting as Chief Judge pursuant to Rule 25(f), Rules for Judicial-Conduct and Judicial-Disability Proceedings (assigning the Chief Judge’s duties to the “most-senior active circuit judge not disqualified”).

Although his complaint is difficult to understand, Complainant appears to complain about the Subject Judge's dismissal of his prior complaint of judicial misconduct filed against a District Judge. The prior complaint concerned the District Judge's decisions in Complainant's civil suit and was dismissed as frivolous and merits-related. See J.C. No. 03-23-90086.² In support of his present complaint, Complainant attaches voluminous exhibits, including a copy of the complaint he previously filed, documents from the underlying civil suit, medical records, and copies of correspondence from the IRS.

Complainant seeks to collaterally attack the Subject Judge's decision to dismiss his prior complaint. Merits related allegations, however, are not cognizable under the Judicial Conduct and Disability Act. 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"); see also 28 U.S.C. § 352(b)(1)(A)(ii); Rule 11(c)(1)(B), Rules for Judicial-Conduct and Judicial-Disability Proceedings. See also Commentary on Rule 11 (the phrase "decision or procedural ruling" is not limited to rulings issued in deciding Article III cases or controversies). Accordingly, these allegations are subject to dismissal.³

² Complainant again complains about Clerk's office actions; i.e., docketing. Allegations against Clerk's Office employees are not cognizable under the Judicial Conduct and Disability Act because the Act only applies to federal judges. These allegations cannot be addressed here. Rule 1, Rules for Judicial-Conduct and Judicial-Disability Proceedings.

³ Complainant did not file a petition for review of the Subject Judge's decision dismissing his complaint of judicial misconduct.

To the extent Complainant alleges that the Subject Judge had an improper motive for his rulings or failed to report a “conspiracy,” his allegations are 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. The underlying case record and Complainant’s exhibits have been reviewed and there is no evidence of an improper motive or other judicial misconduct.

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

s/ Kent A. Jordan
Circuit Judge

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ORDER

(Filed: April 26, 2024)

PRESENT: JORDAN, Circuit Judge.¹

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.

¹ Acting as Chief Judge pursuant to Rule 25(f), Rules for Judicial-Conduct and Judicial-Disability Proceedings (assigning the Chief Judge’s duties to the “most-senior active circuit judge not disqualified”).

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/ Kent A. Jordan
Circuit Judge

Dated: April 26, 2024