

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

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J.C. No. 03-24-90029

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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: May 23, 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 complains about the Subject Judge’s decisions in his criminal proceeding, in particular the Subject Judge’s ruling that Complainant was not capable of knowingly and voluntarily waiving his right to be represented by counsel. He also

contends that the Subject Judge prevented certain motions from being docketed, directed the court reporter to leave out comments from the transcript, pretended that phones in evidence were analyzed, denied subpoenas, and engaged in “various” ex parte hearings.<sup>1</sup>

Complainant seeks to collaterally attack the Subject Judge’s decisions in the present administrative proceeding. 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. Accordingly, these allegations are subject to dismissal.

To the extent Complainant alleges that the Subject Judge engaged in “various” ex parte hearings, his allegations are subject to dismissal as 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)(D), Rules for Judicial-Conduct and Judicial-Disability Proceedings.

Complainant appears to complain about two teleconferences where Complainant’s standby counsel and the prosecuting attorney were present, but Complainant was not.

Even assuming *arguendo* that teleconferences with standby counsel and prosecutorial

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<sup>1</sup> To the extent Complainant is complaining about putative Clerk’s office actions regarding docketing, his allegations are not cognizable. Complainant also alleges that U.S. Marshals and prison staff stole his legal work and that his attorney planned his defense without Complainant’s input. Allegations against Clerk’s Office employees and these other individuals 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.

counsel in attendance (but not the defendant) constitute “ex parte” hearings, Canon 3 of the Code of Conduct for United States Judges provides that a judge may permit an “ex parte communication for scheduling, administrative, or emergency purposes . . . .” Both teleconferences were for administrative purposes. With respect to the first conference, the transcript reflects that it lasted approximately fifteen minutes. Standby counsel asked the Subject Judge what types of motions he could file in his role as standby counsel and requested a video feed in the event defendant had to be removed from the courtroom at trial. The transcript of the second conference reflects that it also lasted fifteen minutes. The Subject Judge asked standby counsel about his readiness for trial in the event of a ruling that Complainant would not be permitted to proceed pro se. The Subject Judge made no substantive ruling and scheduled a hearing for the next day. At that hearing, Complainant and all counsel were present. The Subject Judge questioned Complainant (with standby counsel present) and ultimately ruled that Complainant would not be permitted to proceed pro se. Standby counsel was thereafter appointed as counsel.<sup>2</sup> Under these circumstances, the teleconferences were clearly administrative and not improper ex parte hearings constituting judicial misconduct.

With respect to Complainant’s remaining allegations, the underlying case record has been reviewed and there is no evidence of any improper instructions to the court

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<sup>2</sup> On direct appeal of his criminal conviction, Complainant argues that the District Court violated his Sixth Amendment right to self-representation in denying his request to proceed pro se. I express no opinion as to the merits of Complainant’s pending appeal in this separate administrative proceeding.

reporter or directives that motions not be docketed. The docket reflects that numerous items of correspondence and various pro se motions filed by Complainant were docketed. Complainant's remaining 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.

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

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(Filed: May 23, 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: May 23, 2024