

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. Nos. 03-24-90073, 03-24-90074

IN RE: COMPLAINT OF JUDICIAL MISCONDUCT
OR DISABILITY

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

MEMORANDUM OPINION

(Filed: October 28, 2024)

This complaint is filed under the Judicial Conduct and Disability Act, 28 U.S.C. §§ 351-64, against two United States Circuit Judges (“Subject Judge I” and “Subject Judge II”). 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 filed a civil suit pursuant to 42 U.S.C. § 1983 alleging that his arrest and prosecution violated his rights. The District Court dismissed the second amended complaint, explaining that it was “subject to dismissal based on judicial/prosecutorial immunity; failure to sufficiently allege lack of probable cause for a malicious prosecution

claim; or ... otherwise frivolous.” Complainant moved multiple times for reconsideration and filed a “Motion for Change of Venue.” The District Court denied Complainant’s requests for reconsideration, as well as his motion for a change of venue.¹ Complainant appealed and filed multiple unsuccessful petitions for writs of mandamus. In the present complaint, Complainant complains about Subject Judge I’s alleged issuance of an order regarding immunity. Complainant also complains about Subject Judge II’s affirmance of the District Court’s decision.²

Complainant seeks to collaterally attack the Subject Judges’ 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. In any event, the record does not contain an order issued by Subject Judge I regarding immunity. Rather, Subject Judge I issued an order denying a motion to stay disposition of a petition for rehearing en banc while Complainant sought

¹ Although Complainant complains about the District Court Judge’s decision and the District Judge’s putative bias, he does not name the District Judge as a Subject Judge. His allegations have nonetheless been considered under Rule 5 and I decline to identify a complaint based upon Complainant’s allegations. Rule 5, Rules for Judicial-Conduct and Judicial-Disability Proceedings.

² Complainant also complains about the actions of various state and county judges and employees. These allegations are not cognizable in these proceedings and cannot be addressed. Rule 1, Rules for Judicial-Conduct and Judicial-Disability Proceedings.

the disqualification of Subject Judge II in a motion filed with the United States Supreme Court. Notably, Complainant's motion for rehearing en banc was denied.

Complainant further alleges that the Subject Judges are biased and part of a conspiracy against him because they attended the same law school. In addition, he alleges that Subject Judge II is biased against him because he attended the same college as the wife of the prosecutor named as a defendant in his civil suit and allegedly attended the prosecutor's wedding. Even if true, these allegations do not support Complainant's contentions of bias and judicial misconduct. Indeed, Complainant's allegations were raised previously in two unsuccessful motions filed on appeal seeking Subject Judge II's recusal. Furthermore, there is no factual basis for Complainant's allegations that Subject Judge I and II are "rogue" judges "fixing" cases for their friends. The record has been reviewed and there is no evidence of judicial misconduct. Accordingly, Complainant's remaining 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.³

Based on the foregoing, this complaint will be dismissed pursuant to 28 U.S.C.

§ 352(b)(1)(A)(i), (ii), and (iii).

³ To the extent Complainant seeks to collaterally attack the prior denial of his requests for the recusal of Subject Judge II in the present proceeding, this allegation is subject dismissal as merits-related. 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.").

s/ Kent A. Jordan

Circuit Judge

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ORDER

(Filed: October 28, 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: October 28, 2024