

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. No. 03-24-90012

IN RE: COMPLAINT OF JUDICIAL MISCONDUCT
OR DISABILITY

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

MEMORANDUM OPINION

(Filed: March 25, 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, proceeding pro se, filed a lawsuit in federal court. After granting Complainant leave to proceed in forma pauperis, the Subject Judge screened his complaint

under 28 U.S.C. § 1915(e) and dismissed it with prejudice. Complainant filed a misconduct complaint against the Subject Judge.¹

Complainant raises merits-related allegations in his misconduct complaint, which are subject to dismissal. See 28 U.S.C. § 352(b)(1)(A)(ii) (providing for dismissal where the complaint is “directly related to the merits of a decision or procedural ruling”); see also Rules 4(b)(1), 11(c)(1)(B), Rules for Judicial-Conduct and Judicial-Disability Proceedings. He complains about the dismissal of his lawsuit with prejudice, and that the Subject Judge dismissed the matter before he could present oral argument. These disagreements with the Subject Judge’s rulings are not cognizable under the Judicial Conduct and Disability Act. See 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.”). Further, if Complainant is attempting to appeal or obtain review of the Subject Judge’s ruling, these administrative proceedings under 28 U.S.C. § 351 are not the appropriate forum to seek such relief. See In re Memorandum of Decision of Judicial Conference Committee on Judicial Conduct and Disability, 517 F.3d 558, 561 (U.S. Jud. Conf. 2008) (“The Act is intended to further ‘the effective and expeditious administration of the business of the courts.’ It would be entirely contrary to that purpose to use a misconduct proceeding to

¹ To the extent that Complainant complains that he has “reached out to every lawyer in the area for years” but does not have legal counsel, the claim will not be addressed in this opinion. Only claims against federal judges covered under the Judicial Conduct and Disability Act are cognizable in judicial misconduct proceedings. See 28 U.S.C. § 352(b)(1)(A)(i).

obtain redress for—or even criticism of—the merits of a decision with which a litigant or misconduct complainant disagrees.”).

To the extent that Complainant alleges that the Subject Judge “expressed dislike” for him in the dismissal order, the claim will be dismissed as frivolous and unsupported by evidence that would raise an inference that misconduct has occurred. See 28 U.S.C. § 352(b)(1)(A)(iii); Rule 11(c)(1)(C), (D), Rules for Judicial-Conduct and Judicial-Disability Proceedings. The referenced order and the entire record have been reviewed, and there is no evidence of misconduct of any kind.

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: March 25, 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: March 25, 2024