

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

---

J.C. No. 03-24-90066, 03-24-90067

---

IN RE: COMPLAINT OF JUDICIAL MISCONDUCT  
OR DISABILITY

---

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

---

MEMORANDUM OPINION

---

(Filed: August 19, 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 I”) and a United States Magistrate Judge (“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, a state prisoner, is a plaintiff in a pro se civil rights action that is pending before Subject Judges I and II.<sup>1</sup> Complainant alleges in this complaint of misconduct that the Subject Judges have engaged in improper ex parte communications with defense counsel and have issued decisions reflecting bias against him, including dismissal without prejudice of the amended complaint and denial of a default judgment. Complainant also alleges that defendants in another of his civil cases were erroneously added to the caption of his case. Complainant has filed voluminous exhibits in support of his misconduct complaint.

Complainant's concerns about errors in his case caption do not reasonably establish that the Subject Judges engaged in misconduct. The District Court Clerk's Office is charged with docket management and the creation of case captions.<sup>2</sup> There is no evidence that the Subject Judges were involved with creation of the caption in Complainant's case. Complainant's allegations are therefore 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.

---

<sup>1</sup> Complainant has filed two interlocutory appeals, which were both dismissed for lack of jurisdiction.

<sup>2</sup> Clerk's Office employees are not federal judges and therefore are not subject to the Judicial Conduct and Disability Act. See 28 U.S.C. § 351(d); Rule 1(b), Rules for Judicial-Conduct and Judicial-Disability Proceedings. To the extent the complaint implies misconduct on the part of Clerk's Office employees or others, such allegations will not be addressed in this opinion. See 28 U.S.C. §§ 351, 352(b)(1)(A)(i).

Many of Complainant's allegations call into question judicial rulings and are not cognizable as judicial misconduct. 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.").

Complainant's disagreement with the denial of a default judgment, dismissal of the amended complaint, and similar allegations are therefore 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.

Complainant alleges that the Subject Judges engaged in ex parte communications with defense counsel "regarding discovery issue[s] and [a] motion for default judgment." Complainant contends that calls were made to defense counsel in February and April and that Complainant was wrongfully excluded. The exhibits Complainant has appended to the complaint do not provide evidence that any improper ex parte discussions occurred. To the extent the Subject Judges communicated with defense counsel about scheduling or administrative issues, it is noted that discussions with one party are permissible for scheduling or administrative purposes, see Canon 3(A)(4)(b), Code of Conduct for United States Judges.<sup>3</sup> Such discussions do not constitute "engaging in improper ex parte communications with parties or counsel for one side in a case" as set forth in Rule

---

<sup>3</sup> The Code of Conduct is designed to provide guidance to judges but is not a set of disciplinary rules. "While the Code's Canons are instructive, ultimately, the responsibility for determining what constitutes cognizable misconduct is determined by the Act and these Rules, as interpreted and applied by judicial councils. . . ." Commentary on Rule 4, Rules for Judicial-Conduct and Judicial-Disability Proceedings.

4(a)(1)(C), Rules for Judicial-Conduct and Judicial-Disability Proceedings. Because the allegations of improper ex parte communications are unsupported, they are subject to dismissal. 28 U.S.C. § 352(b)(1)(A)(iii); Rule 11(c)(1)(D), Rules for Judicial-Conduct and Judicial-Disability Proceedings.

Complainant's claim of bias is similarly baseless. When considered apart from his merits-related allegations, it is apparent that the claim is entirely unsubstantiated. A careful review of the record reveals no basis for concluding that the Subject Judges are biased against Complainant. Complainant's remaining cognizable allegations of misconduct are thus 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

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

---

J.C. No. 03-24-90066, 03-24-90067

---

IN RE: COMPLAINT OF JUDICIAL MISCONDUCT  
OR DISABILITY

---

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

---

ORDER

---

(Filed: August 19, 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: August 19, 2024