

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. Nos. 03-24-90089, 03-24-90090, 03-24-90091

IN RE: COMPLAINT OF JUDICIAL MISCONDUCT
OR DISABILITY

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

MEMORANDUM OPINION

(Filed: November 13, 2024)

PRESENT: CHAGARES, Chief Judge.

This complaint is filed under the Judicial Conduct and Disability Act, 28 U.S.C. §§ 351-64, against three United States Circuit Judges (“Subject Judge I,” “Subject Judge II,” and “Subject Judge III.”). 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 is a longtime state prisoner. He recently filed a pro se motion to recall the mandate in a habeas appeal that has been closed for more than twenty years.

The motion was assigned to a panel comprised of the three Subject Judges. The Subject Judges denied the motion as well as Complainant's motion to clarify the ruling.

Complainant claims in this complaint of judicial misconduct that his underlying conviction is the result of fraudulent testimony and false evidence submitted by the FBI in Complainant's criminal trial and that his continued incarceration violates his constitutional rights. Complainant alleges that the three Subject Judges, along with unidentified state and federal judges,¹ "refuse to hold these [FBI] officials accountable for their criminal misconduct which subverted the administration of justice and refuse to review all the evidence of fraud that is still being concealed." Complainant alleges that the Subject Judges are "abettors [sic] of iniquity, criminal fraud and racism," have misapplied the law, and have violated the judicial codes of conduct by denying Complainant's motion to recall the mandate and by failing to consider his evidence.

Complainant states that this complaint of misconduct "is not being used for a substitute for an appeal of a trial error." It is nonetheless apparent that Complainant's allegations attempt to call into question the denial of his motion to recall the mandate.

¹ Complainant presents allegations concerning unnamed state court judges. State court judges 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 any state court judges, such allegations will not be addressed in this opinion. See 28 U.S.C. §§ 351, 352(b)(1)(A)(i). Additionally, the allegations refer to actions by federal judges who are not specified by name and are not identified as Subject Judges of these misconduct complaints. Such allegations do not provide "reasonable grounds for inquiry" into the existence of judicial misconduct on the part of any federal judge. Accordingly, no complaints against these unnamed federal judges will be identified. See Rule 5(a), Rules for Judicial-Conduct and Judicial-Disability Proceedings.

Such allegations 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.”). Allegations concerning Complainant’s disagreement with the denial of his motion to recall the mandate are 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’s cognizable allegations of misconduct are baseless. A review of the record does not reveal evidence that the Subject Judges “abetted” fraud or racism, violated Complainant’s rights or a code of conduct, or otherwise engaged in any form of misconduct. The remaining allegations 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. Nos. 03-24-90089, 03-24-90090, 03-24-90091

IN RE: COMPLAINT OF JUDICIAL MISCONDUCT
OR DISABILITY

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

ORDER

(Filed: November 13, 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: November 13, 2024