

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. No. 03-24-90139

IN RE: COMPLAINT OF JUDICIAL MISCONDUCT
OR DISABILITY

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

MEMORANDUM OPINION

(Filed: February 10, 2025)

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 Magistrate Judge (the “Subject Judge”).¹ 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

¹ Complainant includes allegations against additional individuals, including the Clerk of the District Court and other District Court employees. For instance, Complainant questions case assignments by the Clerk’s Office, observing that six of Complainant’s pro se cases have been assigned to the Subject Judge. He claims that the case assignments are not random and must be attributable to “deception, fraud on the court, or simply obstruction of justice and due process of law violations because there is a mathematical certainty . . . that [the Subject Judge] could not have been randomly selected to preside over the six cases that [Complainant] filed.” The Clerk and the District Court employees are not federal judges, however, 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. Allegations of misconduct against such non-covered individuals will not be addressed in this opinion. See 28 U.S.C. §§ 351, 352(b)(1)(A)(i).

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 prisoner and frequent pro se litigant, filed a civil rights action against prison officials claiming deliberate indifference to his exposure to tobacco smoke. The matter was assigned to a presiding District Judge, who referred it to the Subject Judge.² After Complainant amended the complaint, the Subject Judge issued a report and recommendation recommending that the amended complaint be dismissed for failure to state a claim. Complainant has filed objections to the report and recommendation. The matter remains pending before the presiding District Judge.

Complainant alleges in this complaint of judicial misconduct that the Subject Judge is biased and has retaliated against Complainant because Complainant previously has been a plaintiff in numerous cases before the Subject Judge and because Complainant filed a prior complaint of judicial misconduct naming the Subject Judge. Complainant alleges that the Subject Judge “exact[ed] his retribution of revenge” by denying Complainant the opportunity to file a second amended complaint and by recommending dismissal of the first amended complaint. Complainant also implies that the Subject Judge is interfering with his mail, observing that Complainant receives case-related mail directly from the Subject Judge rather than from the Clerk of the District Court. Finally, Complainant

² The presiding District Judge is not named as a Subject Judge of this complaint of judicial misconduct.

alleges that the Subject Judge engaged in “falsification of facts” because the Subject Judge stated in an order that he is “not presiding over this case,” while the docket identifies the Subject Judge as “Presider.”

Complainant disagrees with the Subject Judge’s decision not to permit a second amended complaint and to recommend dismissal of the operative complaint. Such allegations reflect merits-related disputes and therefore do not constitute cognizable 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 merits-related allegations 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 remaining allegations of misconduct are baseless. For instance, Complainant recognizes that the Clerk of Court, not the Subject Judge, assigns cases to judges, so there is no evidence to substantiate the allegation that the assignment of Complainant’s cases to the Subject Judge is a result of retaliation or bias on the part of the Subject Judge. Likewise, the fact that Complainant receives mail from the Subject Judge does not demonstrate that the Subject Judge is interfering with Complainant’s mail. Finally, the docket reference to the Subject Judge as “Presider” does not suggest “falsification” or any other form of judicial misconduct. The Subject Judge clarified in a written order that “Presider” is a misnomer, and that the Subject Judge is not actually presiding over the case. A careful review of the record yields no evidence of judicial

misconduct. 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.

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: February 10, 2025)

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: February 10, 2025