

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. Nos. 03-25-90031, 03-25-90032, and 03-25-90033

IN RE: COMPLAINT OF JUDICIAL MISCONDUCT
OR DISABILITY

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

MEMORANDUM OPINION

(Filed: May 20, 2025)

PRESENT: CHAGARES, Chief Judge.

The present complaint is filed under the Judicial Conduct and Disability Act, 28 U.S.C. §§ 351-364, against three United States Circuit Judges (Subject Judges I-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 complains that the Subject Judges concluded that his appeal was “non-frivolous” but subsequently denied a petition for rehearing. He also alleges that

none of his filings were “substantively addressed” and that a “final wave of retaliatory orders was issued immediately following” the docketing of his judicial misconduct complaints. In addition, he complains about the denial of his mandamus petition and his emergency motions, as well as the putative intentional delay of the resolution of his motions.

Complainant seeks to challenge the Subject Judges’ decisions in his unsuccessful appeals and mandamus proceeding. Such allegations are merits-related and do not constitute cognizable misconduct in judicial misconduct proceedings. 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 . . .”). The misconduct procedure under the Judicial Conduct and Disability Act “is not designed as a substitute for, or supplement to, appeals or motions for reconsideration. Nor is it designed to provide an avenue for collateral attacks or other challenges to judges’ rulings.” In re Memorandum of Decision of Judicial Conference Committee on Judicial Conduct and Disability, 517 F.3d 558, 561 (U.S. Jud. Conf. 2008). Complainant’s allegations of misconduct are thus 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.¹

¹ As noted above, Complainant further complains of the Subject Judges’ “delay” in deciding motions. Allegations of delay are likewise subject to dismissal as merits-related. Rule 4(b)(2), Rules for Judicial-Conduct and Judicial-Disability Proceedings. Nor is there any evidence of an “improper motive” or “habitual delay.” Id.

To the extent that any of Complainant's contentions do not qualify as merits-based challenges, Complainant's allegations are subject to dismissal 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. Complainant alleges that the timing of the issuance of the rulings denying his petition for rehearing en banc and the Subject Judges' denial of emergency motions after the filing of his judicial misconduct complaint constitutes evidence of retaliation. The underlying record has been reviewed, however, and there is no evidence of improper conduct or bias by the Subject Judges.² Indeed, the Subject Judges issued the order summarily affirming the District Court's decisions underlying the consolidated appeals approximately one month prior to the filing of the complaint of judicial misconduct. The same panel denied Complainant's mandamus petition several months before the present separate administrative proceeding. Under these circumstances, a subsequent decision denying rehearing en banc of an appeal and other motions is not evidence of retaliation.

² Complainant also makes allegations about a District Court Judge who was not named as a Subject Judge in his complaint. I have considered these allegations pursuant under Rule 5, Rules for Judicial-Conduct and Judicial-Disability Proceedings. I conclude the allegations do not provide "reasonable grounds for inquiry" into the existence of misconduct and I therefore decline to identify a complaint based upon them. Id.

Based on the foregoing, the complaint will be dismissed pursuant to 28 U.S.C.
§ 352(b)(1)(A)(ii) and (iii).

s/ Michael A. Chagares
Chief Judge

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ORDER

(Filed: May 20, 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)(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: May 20, 2025