

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. No. 03-22-90004

IN RE: COMPLAINT OF JUDICIAL MISCONDUCT
OR DISABILITY

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

MEMORANDUM OPINION

(Filed: February 22, 2022)

PRESENT: CHAGARES, Chief Judge.

The present complaint was filed under the Judicial Conduct and Disability Act, 28 U.S.C. §§ 351-64, against a United States Bankruptcy 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 alleges that the Subject Judge discriminated against her upon the basis of her religious belief because her employment was terminated after her application for a religious exemption from the Bankruptcy Court’s mandatory COVID-19 vaccine policy

was denied and Complainant did not get vaccinated prior to a certain date.¹ Complainant alleges that her termination constitutes discrimination because she has a genuine religious belief that prevents her from getting vaccinated, she has natural immunity to the virus, both vaccinated and unvaccinated individuals can transmit the virus, and it would not be an undue hardship for the court to accommodate her religious belief. Complainant alleges that the Subject Judge's behavior relative to her termination is "an abuse of power that rises to the level of intentional discrimination and judicial misconduct. My religious beliefs can be accommodated. I would like my job, and indeed career, back, as well as the earned time I used up in trying to stay on the payroll and get [the Subject Judge] to change his mind."

Prior to filing the instant complaint, Complainant initially sought relief by requesting assisted resolution under the U.S. District Court, U.S. Bankruptcy Court, U.S. Probation Office and U.S. Pretrial Services Employment Dispute Resolution Plan ("EDR Plan"), claiming religious discrimination.² Assisted resolution, however, was terminated after no mutually agreeable solution was achieved. Complainant's attorney has forwarded documents from the EDR proceedings for consideration in the present matter. No formal complaint has been filed to date under the EDR Plan.

¹ For purposes of this proceeding, it is assumed that Complainant has a sincerely held religious belief that conflicts with getting vaccinated against COVID-19.

² The same attorney who represented Complainant in the EDR proceedings has entered an appearance on Complainant's behalf in the present proceedings.

In essence, the present complaint of judicial misconduct seeks to collaterally attack the Subject Judge's decision to terminate her employment in accordance with the Bankruptcy Court's mandatory vaccination policy, as well as the Subject Judge's determination that granting her request for a religious exemption would constitute an undue hardship. Complainant cannot attack these official decisions in the present proceedings because cognizable misconduct does not include allegations that question the correctness of official decisions. Rule 4(b)(1), Rules for Judicial-Conduct and Judicial-Disability Proceedings. As the Commentary on Rule 4 explains,

Rule 4(b)(1) tracks the Act, 28 U.S.C. § 352(b)(1)(A)(ii), in excluding from the definition of misconduct allegations "[d]irectly related to the merits of a decision" This exclusion preserves the independence of judges in the exercise of judicial authority by ensuring that the complaint procedure is not used to collaterally call into question the substance of a judge's decision **Any allegation that calls into question the correctness of an official decision . . . – without more – is merits-related. The phrase "decision ..." is not limited to rulings issued in deciding Article III cases or controversies.** Thus, a complaint challenging the correctness of a chief judge's determination to dismiss a prior misconduct complaint would be properly dismissed as merits-related – in other words, as challenging the substance of the judge's administrative determination to dismiss the complaint – even though it does not concern the judge's rulings in Article III litigation.

(emphasis added). See also 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 obtain redress for—or even criticism of—the merits of a decision with

which a litigant or misconduct complainant disagrees.”) Complainant’s merits-related 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.

In any event, even assuming arguendo that it is within my purview under the Act to review the Subject Judge’s decisions, it is clear that the Subject Judge’s termination of an employee in accordance with a District Court-wide policy requiring vaccination of all employees against COVID-19 is not “intentional discrimination” on the basis of religion within the meaning of the Judicial Conduct and Disability Act. Rule 4(a)(3), Rules for Judicial-Conduct and Judicial-Disability Proceedings. Indeed, as stated in the documents provided by Complainant, the Bankruptcy Court’s mandatory vaccination policy was adopted under the direction of the District Court and the District Court’s Security Committee. When Complainant failed to comply with this policy, she was terminated. Although Complainant may disagree with the policy and the decision not to grant her a religious exemption, the Subject Judge’s decision to terminate Complainant in compliance with a Court policy applicable to all employees is not an “abuse of power” rising to the level of judicial misconduct.³

To the extent Complainant alleges that the Subject Judge’s actions and/or decisions were motivated by an improper discriminatory motive, her allegations are likewise subject to dismissal. The Subject Judge’s memorandum and the other documents from the EDR

³ Notably, in a detailed memorandum that was transmitted to Complainant, the Subject Judge did not make a decision about whether or not Complainant’s religious belief was sincerely held. Rather, as discussed below, the denial of a religious exemption was based upon undue hardship.

process provided by Complainant have been reviewed. There is no evidence of improper bias or an otherwise discriminatory motive on the part of the Subject Judge. Furthermore, the Subject Judge issued a memorandum explaining why Complainant's request for a religious exemption was denied based upon undue hardship. Thus, to the extent Complainant alleges that the Subject Judge has a discriminatory motive, Complainant's allegations of misconduct are dismissed as unsupported by any evidence that would raise an inference that judicial misconduct has occurred. 28 U.S.C. § 352(b)(1)(A)(iii); Rule 11(c)(1)(D), Rules for Judicial-Conduct and Judicial-Disability Proceedings.

Finally, Complainant appears to seek reinstatement and the restitution of leave as part of the present proceedings. This type of relief is not recognized under the Judicial Conduct and Disability Act. See Rule 20, Rules for Judicial-Conduct and Judicial-Disability Proceedings (outlining potential Judicial Council actions in the event a complaint is not dismissed, including remedial actions directed at judges listed in 28 U.S.C. § 354(a)(2)). See also Commentary on Rule 11 ("Because the Act deals with the conduct of judges, the emphasis is on correction of the judicial conduct that was the subject of the complaint.") (citation omitted). Under the circumstances presented here, EDR proceedings are the appropriate avenue in which to seek reinstatement.

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 22, 2022)

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 22, 2022