

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. Nos. 03-16-90023, 03-16-90024, 03-16-90025, 03-16-90026

IN RE: COMPLAINT OF JUDICIAL MISCONDUCT
OR DISABILITY

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

MEMORANDUM OPINION

(Filed: May 16, 2016)

PRESENT: McKEE, Chief Judge.

This is a complaint filed under the Judicial Conduct and Disability Act, 28 U.S.C. §§ 351-64, against a United States District Judge (hereinafter “Subject Judge I”) and three United States Court of Appeals Judges (hereinafter “Subject Judge II,” “Subject Judge III,” and “Subject Judge IV”). For the reasons discussed below, the complaint will be dismissed.¹

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

¹ Complainant also makes allegations concerning individuals and entities not subject to the Judicial Conduct and Disability Act; e.g., an attorney, a state employee, and a company. See 28 U.S.C. §§ 351, 352(b)(1)(A)(i); Rule 4, Rules for Judicial-Conduct and Judicial-Disability Proceedings. These allegations will not be addressed in this opinion.

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). The “misconduct procedure [under the 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).

By way of background, Complainant filed a civil suit contending that he had been fired from his position for a discriminatory reason. Subject Judge I granted summary judgment in favor of the defendant company, concluding that Complainant was not an employee of the defendant company. Subject Judges II, III, and IV affirmed on appeal.

In the present administrative proceedings, Complainant seeks to challenge the Subject Judges’ rulings in his civil suit and subsequent appeal. For example, he contends that he has documents in his possession that were not taken into consideration by the courts and argues that a supervisor “did in fact make discriminatory and slanderous statements . . . All judges were wrong and [his] motion to reopen should be granted” These allegations are plainly merits-related and are not cognizable under the Judicial Conduct and Disability Act. See 28 U.S.C. § 352(b)(1)(A)(ii) (chief judge may dismiss a complaint if he or she finds that it is directly related to the merits of a decision or procedural ruling); Rule 3(h)(3)(A), Rules for Judicial-Conduct and Judicial-Disability Proceedings (“[a]n allegation that calls into question the correctness of a judge’s ruling . . .

without more, is merits-related”); Rule 11(c)(1)(B), Rules for Judicial-Conduct and Judicial-Disability Proceedings (a complaint must be dismissed in whole or in part to the extent that the chief judge concludes that the complaint is directly related to the merits of a decision or procedural ruling).

In any event, there is no evidence to support Complainant’s allegations of judicial misconduct against any of the Subject Judges and his complaint is dismissed as frivolous and unsupported by any 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.

For the foregoing reasons, the complaint is dismissed pursuant to 28 U.S.C. § 352(b)(1)(A)(i), (ii), and (iii).

s/ Theodore A. McKee
Chief Judge

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ORDER

(Filed: May 16, 2016)

PRESENT: McKEE, 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/ Theodore A. McKee
Chief Judge

Dated: May 16, 2016