

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. Nos. 03-15-90029; 03-15-90030; 03-15-90031; 03-15-90032; 03-15-90033;
03-15-90034; 03-15-90035; 03-15-90036; 03-15-90037; 03-15-90038; 03-15-90039;
03-15-90040; 03-15-90041; 03-15-90042; 03-15-90043; 03-15-90044; 03-15-90045;
03-15-90046; 03-15-90047; 03-15-90048; 03-15-90049; 03-15-90050; 03-15-90051;
03-15-90052; 03-15-90053; 03-15-90054; 03-15-90055; 03-15-90056; 03-15-90057;
03-15-90058

IN RE: COMPLAINT OF JUDICIAL MISCONDUCT
OR DISABILITY

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

MEMORANDUM OPINION

Filed: June 30, 2015

PRESENT: CHAGARES, Circuit Judge.¹

This complaint is filed under the Judicial Conduct and Disability Act, 28 U.S.C. §§ 351-64, against ten United States Circuit Judges (“Subject Judge I” through “Subject Judge X”), fourteen United States District Judges (“Subject Judge XI” through “Subject Judge XXIV”), and six United States Magistrate Judges (“Subject Judge XXV” through

¹ Acting as chief judge for purposes of disposition of this complaint, pursuant to Rule 25(f), Rules for Judicial-Conduct and Judicial-Disability Proceedings.

“Subject Judge XXX”).² 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, a state prisoner, is a frequent pro se litigant and is subject to the “three strikes” rule. In 2014, he initiated at least four civil proceedings in two different District Courts.

In this complaint of judicial misconduct, Complainant identifies two of his 2014 civil rights cases by docket number. In the first case, Subject Judge XVI granted leave to proceed *in forma pauperis* and dismissed the complaint with leave to amend.

Complainant filed several motions and an amended complaint. The matter was reassigned to Subject Judge XIV, who dismissed the amended complaint, again granting leave to amend. Complainant filed a motion for reconsideration and a motion for recusal, which remain pending, but has not yet filed a second amended complaint.

² The complaint also named two deceased judges and one justice of the United States Supreme Court. Complainant was informed by letter that complaints under the Judicial Conduct and Disability Act may be filed only against judges currently holding an office described in Rule 4 of the Rules for Judicial-Conduct and Judicial-Disability Proceedings, and that the complaint therefore was not accepted as to the three judges to whom Rule 4 does not apply.

In the second case, Subject Judge XXI denied Complainant leave to proceed *in forma pauperis*, dismissed the complaint, and concluded that any appeal would be frivolous and not taken in good faith. Complainant filed a motion seeking to file an untimely appeal, which Subject Judge XXI has not addressed. Complainant later filed a petition for a writ of mandamus, requesting the Court of Appeals to direct Subject Judge XXI to rule upon the motion. Although the Court of Appeals noted some concern that the delay in ruling was not insignificant, it expressed confidence that Subject Judge XXI would soon rule upon the request and therefore denied the petition.

In this complaint of judicial misconduct, Complainant alleges that the thirty named Subject Judges are involved in a vast conspiracy aimed “to deny me due process and equal protection of the laws . . . , which has resulted in Complainant being subject to 18 years of physical and psychological abuse and torture from corrupt and sadistic (inter alia) prison staff; continued incarceration for crimes he did not commit; and repeated/automatic rejections of his numerous attempts to obtain legal relief via mandamus, habeas corpus, and civil complaint actions.” (emphasis in original.) Complainant alleges that the Subject Judges “have established special illegal rules and procedures, designed by or approved of by the Circuit Justices, that are designed to speed-ball Grievant and those similarly situated through the judicial processes, which results in automatic dismissals, denials, rejections, and/or cruel games, arbitrarily.” Finally, Complainant argues that, because the Subject Judges “wield a substantial amount of power and authority, which they are using

to ride rough shod over Complainant's rights," this complaint should be resolved in a different judicial circuit.

To the extent that this complaint is intended to challenge decisions and rulings rendered by any of the Subject Judges, including the decisions by Subject Judges XIV and XIV to dismiss the first civil rights complaint with leave to amend and the decision by Subject Judge XXI to deny *in forma pauperis* status and dismiss the second civil rights complaint, such allegations are merits-related. "An allegation that calls into question the correctness of a judge's ruling, including a failure to recuse, without more, is merits-related." Rule 3(h)(3)(A), Rules for Judicial-Conduct and Judicial-Disability Proceedings. This administrative proceeding not the appropriate forum for raising such allegations, because merits-related allegations do not constitute cognizable misconduct 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 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).

It also appears that Complainant may be attempting to collaterally challenge his criminal conviction and the conditions of his confinement. Again, such merits-related allegations are not appropriate subject matter for a complaint of judicial misconduct. 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). Because none of these allegations are cognizable in this proceeding, they are dismissed.

When considered apart from the merits-related allegations, Complainant offers nothing to substantiate his vague and implausible suspicions about the existence of a vast conspiracy against him. Indeed, Complainant has failed to identify or describe a single incident or action involving any one of the thirty named Subject Judges that could support these contentions. Accordingly, Complainant's non-merits-related allegations are subject to dismissal 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. The request to transfer this complaint to another jurisdiction is denied.

For the foregoing reasons, the complaint is dismissed pursuant to 28 U.S.C. §§ 352(b)(1)(A)(i), (ii), and (iii). It is noted that Complainant filed two prior judicial misconduct complaints, which also were dismissed on these grounds. See J.C. Nos. 04-19; 04-21. Complainant nonetheless filed this complaint, which once again is merits-related, frivolous, and unsupported. Moreover, Complainant has named thirty sitting federal judges without providing any particular allegations against any of them. This is an obvious attempt to disqualify the majority of the judges of this jurisdiction from deciding

this case. Due to these abuses of the complaint procedure, a copy of this Memorandum Opinion and Order will be transmitted to the Judicial Council to determine whether to issue an order to show cause why Complainant should not be enjoined from filing further complaints under the Judicial Conduct and Disability Act. See Rule 10(a), Rules for Judicial-Conduct and Judicial-Disability Proceedings.³

s/ Michael A. Chagares
Circuit Judge

³ Rule 10(a) of the Rules of Judicial-Conduct and Judicial-Disability Proceedings provides:

Abusive Complaints. A complainant who has filed repetitive, harassing, or frivolous complaints, or has otherwise abused the complaint procedure, may be restricted from filing further complaints. After giving the complainant an opportunity to show cause in writing why his or her right to file further complaints should not be limited, a judicial council may prohibit, restrict, or impose conditions on the complainant's use of the complaint procedure. Upon written request of the complainant, the judicial council may revise or withdraw any prohibition, restriction, or condition previously imposed.

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

ORDER

Filed: June 30, 2015

PRESENT: CHAGARES, Circuit Judge.¹

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:

¹ Acting as chief judge for purposes of disposition of this complaint, pursuant to Rule 25(f), Rules for Judicial-Conduct and Judicial-Disability Proceedings.

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 clerk of the court of appeals within **35 days** of the date on the clerk's letter informing the parties of the chief judge's order.

18(b) Form. The petition should be in letter form, addressed to the clerk of the court of appeals, 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 Clerk's Office of the Court of Appeals for the Third Circuit and on the Court of Appeals' internet site, www.ca3.uscourts.gov.

s/ Michael A. Chagares
Circuit Judge

Dated: June 30, 2015