

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. Nos. 03-16-90008, 03-16-90009

IN RE: COMPLAINT OF JUDICIAL MISCONDUCT
OR DISABILITY

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

MEMORANDUM OPINION

(Filed: March 18, 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 Magistrate Judge and a United States District Judge (hereinafter “Subject Judge I” and “Subject Judge II”). For the reasons discussed below, the complaint will be dismissed.¹

¹ This complaint was filed in an unusual manner. Complainant filed the complaint in the District Court and filed a motion requesting that the District Court Clerk be directed to serve the complaint on the Circuit Executive’s Office. Subject Judge I granted the motion and the complaint was mailed to this office by the District Court Clerk’s Office. As the allegations in the complaint were made under penalty of perjury in accordance with Rule 6, the complaint was accepted for filing. Rules 6, 8, Rules for Judicial-Conduct and Judicial-Disability Proceedings. It is noted, however, that any future complaints of judicial misconduct should be filed directly with the Third Circuit Circuit Executive’s Office. Rule 7(a) and Commentary on Rule 7, Rules for Judicial-Conduct and Judicial-Disability Proceedings. In addition, it appears that Complainant’s complaint of judicial misconduct is on the District Court’s public docket for the underlying civil proceeding. Proceedings under the Judicial Conduct and Disability Act, however, are confidential

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 Judges “suffer a severe impairment of cognitive abilities” and their actions “demonstrated misconduct in [an] egregious and hostile manner in which they engaged in making inappropriately partisan statements . . . by not showing respect for and complying with the mandatory provisions of law [in a local rule] in a partial manner for prison official Defendants, against prisoner plaintiffs.” Complainant’s sole support for his allegations of disability and misconduct is his disagreement with the Subject Judges’ rulings with respect to his motion for summary judgment and the Subject Judges’ refusal to accept his argument that defendant conceded his motion by not filing a response to his statement of material facts in alleged violation of a local rule. Complainant also discusses at length his dissatisfaction with other rulings in the course of his litigation. However, 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’

pursuant to 28 U.S.C. § 360 and there should be no public access to the complaint or any public reference to its filing.

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 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; 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 disability and misconduct, and they are dismissed as frivolous and unsupported by any evidence that would raise an inference that misconduct has occurred or that a disability exists. 28 U.S.C. § 352(b)(1)(A)(iii); Rule 11(c)(1)(C), (D), Rules for Judicial-Conduct and Judicial-Disability Proceedings.²

² Complainant also filed an unsworn supplement making additional allegations of misconduct, specifically allegations of “prejudice towards pro se prisoner [parties].” Complainant then goes on to allege, without providing any support for his assertion, that in each case where a pro se prisoner failed to include a responsive statement of material facts, the “U.S. Defense Attorneys Statements of Material Facts was deemed admitted” I have considered these unsworn allegations of bias pursuant to Rule 5 of the Rules for Judicial-Conduct and Judicial-Disability. I conclude the allegations do not provide “reasonable grounds for inquiry” into the existence of misconduct or disability and I therefore decline to identify any complaints based upon them. See Rule 5, 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)(ii) and (iii).

s/ Theodore A. McKee
Chief Judge

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ORDER

(Filed: March 18, 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)(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: March 18, 2016