

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. Nos. 03-16-90010, 03-16-90011, 03-16-90012

IN RE: COMPLAINT OF JUDICIAL MISCONDUCT
OR DISABILITY

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

MEMORANDUM OPINION

(Filed: April 15, 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 and two United States Magistrate Judges (hereinafter “Subject Judge I,” “Subject Judge II,” and “Subject Judge III”).¹ 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

¹ Complainant’s complaint against a retired federal judge was not accepted for filing. Rule 4, Rules for Judicial-Conduct and Judicial-Disability Proceedings.

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).

As a preliminary matter, Complainant makes allegations concerning individuals who are not subject to the Judicial Conduct and Disability Act; e.g., attorneys, a U.S. Marshal, a probation officer, state employees, and state officials. See 28 U.S.C. §§ 351, 352(b)(1)(A)(i); Rule 4, Rules for Judicial-Conduct and Judicial-Disability Proceedings. Accordingly, these allegations will not be addressed in this opinion.

Although his complaint is not very clear, Complainant appears to allege that the Subject Judges engaged in judicial misconduct because they refused to investigate and discipline a probation officer, acted “willfully” to stop him from exposing a state criminal enterprise, and colluded with state officials in implementing an additional “surreal sham parole term.” Complainant’s support for these allegations is his disagreement with the Subject Judges’ rulings and official actions, for example, discovery rulings, denial of a request to proceed *in forma pauperis*, and a refusal to recuse themselves. 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, including a failure to recuse, 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 and they are 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. Notably, Complainant filed a mandamus petition making allegations similar to those asserted in the present administrative proceedings. A panel of this Court denied the mandamus petition seeking recusal and a transfer of Complainant’s cases. In relevant part, the panel observed, “To the extent that [Complainant] may be seeking to disqualify the District Judges sitting in the [District] based on alleged bias and prejudice, his petition does not establish that a reasonable person, with knowledge of all the facts, would conclude that the District Judges’ impartiality might reasonably be questioned.”

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: April 15, 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: April 15, 2016