

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. Nos. 03-17-90025, 03-17-90026

IN RE: COMPLAINT OF JUDICIAL MISCONDUCT
OR DISABILITY

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

MEMORANDUM OPINION

(Filed: August 4, 2017)

PRESENT: McKEE, *Circuit Judge*.¹

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 a United States Magistrate Judge (“Subject Judge II”).² For the reasons discussed below, the complaint will be dismissed.³

¹ Acting pursuant to Rule 25(f), *Rules for Judicial-Conduct and Judicial-Disability Proceedings*.

² Complainant previously filed three prior complaints of judicial misconduct which were all dismissed as frivolous and merits-related. J.C. Nos. 00-27, 00-28, 03-09-90059. Two of these unsuccessful prior complaints were against Subject Judge II.

³ To the extent Complainant’s allegations concern actions by individuals who are not covered by the Judicial Conduct and Disability Act, including FBI agents, state court judges, and others, the allegations will not be addressed in this opinion. *See* 28 U.S.C. §§ 351, 352(b)(1)(A)(i); Rule 4, *Rules for Judicial-Conduct and Judicial-Disability Proceedings*.

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 complaint may be dismissed if 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). 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).

Complainant was a pro se plaintiff in a civil action assigned to Subject Judge I and Subject Judge II. Complainant sought the recusal of both judges. Subject Judge II recommended dismissal of Complainant’s lawsuit in his Report and Recommendation and further stated that recusal was not required under the circumstances presented. Subject Judge I adopted Subject Judge II’s Report and Recommendation and dismissed Complainant’s civil suit. Complainant filed an appeal, which was dismissed for failure to pay the filing fee or file a motion to proceed in forma pauperis.

In these present administrative proceedings, Complainant contends that the Subject Judges should have recused themselves. Complainant also alleges that the Subject Judges should not have dismissed his civil suit and complains that he was denied an evidentiary

hearing. In addition, Complaint complains that he should have been appointed an attorney. It is clear that Complainant seeks to collaterally attack the Subject Judges' decisions and rulings, and thus his allegations are dismissed as merits-related. *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).

Complainant further alleges that the Subject Judges had “discussions” with the state courts that impeded justice. Complainant does not explain or provide any evidence for these allegations. Complainant further alleges that the Subject Judges were part of RICO Act violations, a conspiracy, and committed bribery and fraud. Again, Complainant provides no evidence for these allegations, but speculates without any basis that there may be proof in outside bank balances. Complainant’s baseless allegations 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*.

In addition, Complainant contends that the Subject Judges were prejudiced, hostile, and biased against him. Complainant alleges that they treated him in an egregious manner because they called him a “mentally disturbed person.” Complainant’s allegation may be a reference to a comment made by Subject Judge II in a Report and Recommendation issued in a habeas proceeding. Subject Judge II commented that Complainant might be mentally ill based on the arguments he made in support of his position that he was not guilty of murdering his wife; e.g., the argument that his deceased wife was still alive. Subject Judge II’s statement does not rise to the level of judicial misconduct under the circumstances presented here. Rule 11(c)(1)(A), *Rules for Judicial-Conduct and Judicial-Disability Proceedings* (complaint must be dismissed to the extent the chief judge concludes that the complaint alleges conduct that, even if true, is not prejudicial to the effective and expeditious administration of the business of the courts). Furthermore, Complainant’s allegations of prejudice, bias, and hostility 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*.

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
Circuit Judge

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ORDER

(Filed: August 4, 2017)

PRESENT: McKEE, *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:

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.

¹ Acting pursuant to Rule 25(f), *Rules for Judicial-Conduct and Judicial-Disability Proceedings*.

Rule 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
Circuit Judge

Dated: August 4, 2017