

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. Nos. 03-17-90022, 03-17-90023, 03-17-90027, 03-17-90028

IN RE: COMPLAINTS OF JUDICIAL MISCONDUCT
OR DISABILITY

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

MEMORANDUM OPINION

(Filed: August 15, 2017)

PRESENT: AMBRO, *Circuit Judge.*¹

These complaints are filed under the Judicial Conduct and Disability Act, 28 U.S.C. §§ 351-64, against a United States Circuit Judge (“Subject Judge I”) and a United States District Judge (“Subject Judge II”).² For the reasons discussed below, the complaints will be dismissed.

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

² Complainant presents allegations concerning court employees and others who are not federal judges and who therefore are not subject to the Judicial Conduct and Disability Act. Such 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*. In addition, although Complainant presents allegations concerning “the Judicial Council,” Complainant was advised in writing that this matter was accepted for filing only as to those Judges specifically identified by name. Because none of the allegations concerning “the Judicial Council” constitute “reasonable grounds for inquiry” into the existence of judicial misconduct, no complaints will be identified based upon these allegations. See Rule 5, *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 maybe dismissed if, after review, it is found to be not cognizable under the statute, directly related to the merits of a decision or procedural ruling, or frivolous or lacking sufficient evidence to raise an inference of misconduct. 28 U.S.C. §§ 352(b)(1)(A)(i)-(iii).

Complainant filed a pro se civil complaint, which Subject Judge II dismissed for failure to state a claim. Although Complainant did not appeal the dismissal, Complainant filed two complaints of judicial misconduct naming Subject Judge II. *See* J.C. Nos. 03-16-90001, 03-16-90070. Subject Judge I dismissed one of those complaints as merits-related, frivolous, and unsupported.³ Complainant petitioned for review, and the Judicial Council affirmed Subject Judge I’s order.

Complainant now files two complaints of judicial misconduct, naming both Subject Judge I and Subject Judge II. In these complaints, Complainant claims to be the victim of “judicial warfare.” Among other things, Complainant alleges that Subject Judge II should not have dismissed his civil action and instead should have entered a default judgment in his favor. He contends that his claims have been wrongfully “evaded, obstructed, and unadjudicated.” In addition, Complainant alleges that Subject Judge I’s decision to dismiss his complaint of judicial misconduct “is totally unacceptable because it evades the

³ A Circuit Judge who was not named as a Subject Judge dismissed the other complaint of judicial misconduct. That complaint also was dismissed as merits-related, frivolous, and unsupported.

material and substantial evidence” of his allegations. Complainant alleges that both Subject Judges have “failed to correct judicial error, and failed to affirm the facts and the evidence, and failed to adjudicate the preponderances [*sic*] of the law.” Complainant accuses the Subject Judges of racism, “judicial prejudice,” and “violat[ing] the laws of the United States government.”

To the extent Complainant is attempting to collaterally challenge decisions and rulings by Subject Judges I and II, the allegations are merits-related. “An allegation that calls into question the correctness of a judge’s ruling, . . . without more, is merits-related.” Rule 3(h)(3)(A), *Rules for Judicial-Conduct and Judicial-Disability Proceedings*; see also Commentary on Rule 3(h)(3)(A) (“a complaint challenging the correctness of a chief judge’s determination to dismiss a prior misconduct complaint would be properly dismissed as merits-related”). 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); Rules 3(h)(3)(A), 11(c)(1)(B), *Rules for Judicial-Conduct and Judicial-Disability Proceedings*. 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). Accordingly, Complainant’s merits-related allegations will be dismissed.

Complainant's remaining claims, including his allegations of racism, prejudice, and illegal activity, are premised on nothing more than his merits-related allegations. When considered independently, these allegations are wholly lacking evidentiary support. Accordingly, all remaining allegations are subject to dismissal as frivolous and unsupported by 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*.

Finally, Complainant's current complaints merely repeat many of the allegations set forth in his two prior complaints of judicial misconduct. To the extent he has failed to provide "material information not previously considered," Rule 11(c)(2), *Rules for Judicial-Conduct and Judicial-Disability Proceedings*, the allegations are subject to dismissal for the same reasons discussed in the memorandum opinions issued in those matters. *See J.C. Nos. 03-16-90001, 03-16-90070.*

Based on the foregoing, these complaints will be dismissed pursuant to 28 U.S.C. §§ 352(b)(1)(A)(i), (ii), and (iii). Complainant has now filed four separate complaints of judicial misconduct, three of which name Subject Judge II, and all of which have been determined to be merits-related, frivolous, and lacking in evidentiary support. Accordingly, Complainant's attention is directed to Rule 10(a), *Rules for Judicial-*

*Conduct and Judicial-Disability Proceedings.*⁴ Future abuse of the judicial misconduct complaint procedure may result in the imposition of restrictions under this provision.

s/ Thomas L. Ambro
Circuit Judge

⁴ 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, the 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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ORDER

(Filed: August 15, 2017)

PRESENT: AMBRO, *Circuit Judge.*¹

On the basis of the foregoing opinion entered on this date, it is ORDERED AND ADJUDGED that the written complaints brought pursuant to 28 U.S.C. § 351 are 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 as chief judge for purposes of disposition of these complaints pursuant to Rule 25(f), *Rules for Judicial-Conduct and Judicial-Disability Proceedings*.

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/ Thomas L. Ambro
Circuit Judge

Dated: August 15, 2017