

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. Nos. 03-17-90034 and 03-17-90035

IN RE: COMPLAINT OF JUDICIAL MISCONDUCT
OR DISABILITY

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

MEMORANDUM OPINION

(Filed: July 19, 2017)

PRESENT: SMITH, *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 (hereinafter “Subject Judge I”) and a United States District Judge (“Subject Judge II”). For the reasons discussed below, the complaint will be dismissed.¹

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

¹ To the extent Complainant’s allegations concern actions by individuals who are not covered by the Judicial Conduct and Disability Act, including prison employees and attorneys, 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*.

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, an inmate who is proceeding *pro se* in a pending civil suit filed against prison staff, makes scurrilous allegations about Subject Judge I that are completely unsupported by the record. Understandably, Subject Judge I denies these allegations in the strongest possible terms. Specifically, Complainant alleges that Subject Judge I has engaged in improper contact with a prison employee.

I conducted a limited inquiry pursuant to Rule 11(b), *Rules for Judicial-Conduct and Judicial-Disability Proceedings* and asked Subject Judge I to respond to the complaint.² In a thorough response, Subject Judge I denied knowing or “meeting or speaking” with the prison employee in question and described Complainant’s allegations as “completely false.” The record in the underlying civil matter has been thoroughly reviewed. In short, that review reveals absolutely no evidence of judicial misconduct. Indeed, none of the transcripts for the four telephonic hearings cited by Complainant

² A copy of Subject Judge I’s response was not provided to Complainant in accordance with 28 U.S.C. § 352(a) (“Such response shall not be made available to the complainant . . .”).

contain any support for his contention that the Subject Judge acknowledged the alleged contact with a prison employee. Complainant has invented his allegations about Subject Judge I's putative misconduct out of whole cloth. Accordingly, Complainant's allegations are dismissed because a limited inquiry demonstrates "that the allegations in the complaint lack any factual foundation" and are "conclusively refuted by objective evidence." 28 U.S.C. § 352(b)(1)(B).

Complainant's remaining allegations regarding Subject Judge I and Subject Judge II are primarily merits-related. For example, Complainant complains about Subject Judge I's putative delay in ruling on a motion to amend his complaint. Allegations of delay are merits-related and subject to dismissal. Rule 3(h)(3)(B), *Rules for Judicial-Conduct and Judicial-Disability Proceedings* (judicial misconduct does not include "an allegation about delay in rendering a decision or ruling"); Commentary on Rule 3 ("a complaint of delay in a single case is excluded as merits-related"); Rule 11(c)(1)(B), *Rules for Judicial-Conduct and Judicial-Disability Proceedings*. In any event, as Subject Judge I explained in a response to my inquiry, the motion to amend was incorrectly marked as decided on the docket while the Court was seeking counsel for Complainant. Subject Judge I has since ruled on the motion.

Complainant further complains about the Subject Judges' failure to transfer his case to another venue and Subject Judge I's caution that subsequent duplicative filings would be subject to the recommendation that sanctions be imposed. Complainant also complains

about the interpretation of his filings as motions for preliminary injunctions. In addition, Complainant alleges that Subject Judge II's putative failure to issue a final order is blocking him from appealing Subject Judge I's decisions. Complainant's allegations are plainly merits-related and are dismissed. 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 . . . 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).

To the extent Complainant alleges that the Subject Judges had an improper motive for their rulings or that their actions are somehow indicative of the existence of a disability, Complainant's allegations are likewise dismissed. There is no evidence of the existence of judicial misconduct or a disability. Complainants' allegations are therefore also subject to dismissal 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*.³

³ Complainant submitted a letter containing additional unsworn allegations. I have considered the allegations under Rule 5, *Rules for Judicial-Conduct and Judicial-*

In view of the foregoing, Complainant is strongly cautioned that the filing of “repetitive, harassing, or frivolous complaints” may result in the restriction of his ability to file further complaints of judicial misconduct. Rule 10(a), *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/ D. Brooks Smith
Chief Judge

Disability Proceedings. 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*.

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ORDER

(Filed: July 19, 2017)

PRESENT: SMITH, *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.

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/ D. Brooks Smith

Chief Judge

Dated: July 19, 2017