

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. Nos. 03-17-90049, 03-17-90050, 03-17-90051, 03-17-90052,
03-17-90053, 03-17-90054, 03-17-90055, 03-17-90056,
03-17-90057, 03-17-90058, 03-17-90059, 03-17-90060

IN RE: COMPLAINT OF JUDICIAL MISCONDUCT
OR DISABILITY

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

MEMORANDUM OPINION

(Filed: September 14, 2017)

PRESENT: SMITH, *Chief Judge*.¹

This complaint was filed under the Judicial Conduct and Disability Act, 28 U.S.C. §§ 351-64, against twelve United States Circuit Judges (“Subject Judge I” through “Subject Judge XII”). For the reasons discussed below, the complaint will be dismissed.

¹ The Judicial Council granted permission to the chief judge to dispose of this complaint on the merits pursuant to Rule 25(f), *Rules for Judicial-Conduct and Judicial-Disability Proceedings* (“If all circuit judges in regular active service are disqualified, the judicial council may determine . . . in the interest of sound judicial administration, to permit the chief judge to dispose of the complaint on the merits.”).

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 filed a pro se civil rights complaint against the Social Security Administration, which the District Court dismissed as barred by sovereign immunity. Complainant appealed, and a panel of the Court of Appeals comprised of Subject Judges III, X, and XII, affirmed the judgment. Complainant filed a petition for rehearing, which Subject Judges I through XII denied.

In this complaint of judicial misconduct, Complainant demands that his District Court proceeding be reinstated to “force the defendants to come to court for the hearing.” He alleges that he has been seeking justice for fifteen years, that his human rights and civil rights have been violated, and that the judicial system has left him frustrated. Complainant alleges that he is a victim of racism and bias based upon his indigence, and he contends that his complaints have been “ignored.” He

further alleges that the Subject Judges have failed to properly apply “the law of the land.”

Complainant’s allegations plainly reflect his disagreement with the decision to affirm the dismissal of Complainant’s civil rights complaint and to deny Complainant’s petition for rehearing. Such 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*. 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). Complainant’s merits-related allegations will therefore be dismissed.

When considered apart from his merits-related allegations, Complainant’s vague allegations of racism and bias are entirely unsubstantiated. The record

reveals no evidence to support a claim that any of the twelve Subject Judges have engaged in judicial misconduct. 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*.

Based on the foregoing, this complaint will be dismissed pursuant to 28 U.S.C. §§ 352(b)(1)(A)(ii) and (iii). Given the merits-related and frivolous nature of the allegations of this complaint, which names numerous judges, including every Circuit Judge in regular active service to the Court of Appeals, Complainants' attention is directed to Rule 10(a), *Rules for Judicial-Conduct and Judicial-Disability Proceedings*.² Future abuse of the judicial misconduct complaint procedure may result in the imposition of restrictions under this provision.

² Rule 10(a) of the *Rules for 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.

s/ D. Brooks Smith

Chief Judge

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ORDER

(Filed: September 14, 2017)

PRESENT: SMITH, *Chief 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)(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*

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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/ D. Brooks Smith
Chief Judge

Dated: September 14, 2017