

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. Nos. 03-17-90070, 03-17-90071, 03-17-90080

IN RE: COMPLAINTS OF JUDICIAL MISCONDUCT
OR DISABILITY

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

MEMORANDUM OPINION

(Filed: November 20, 2017)

PRESENT: SMITH, *Chief Judge*.

These complaints are filed under the Judicial Conduct and Disability Act, 28 U.S.C. §§ 351-64, against a United States District Judge (“Subject Judge I”) and a United States Magistrate Judge (“Subject Judge II”). For the reasons discussed below, the complaints 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 raise an inference of misconduct. 28 U.S.C. §§ 352(b)(1)(A)(i)-(iii).

Since 2015, Complainant has been a defendant in a criminal proceeding before Subject Judge I. Complainant is detained and trial has been repeatedly postponed to

permit assessment of Complainant's competence to stand trial. At least three competency hearings have been held and several doctors have provided medical assessments, but Subject Judge I has not yet ruled on Complainant's competence to stand trial. Subject Judge II has not presided over any aspect of this criminal proceeding, although Subject Judge II handled matters in a prior prosecution of Complainant.

Complainant has filed two separate complaints of judicial misconduct. In the first, which names Subject Judges I and II, Complainant alleges that the Subject Judges are "conspiring with defense counsel and government counsel to delay criminal proceedings to keep me confined." In addition, Complainant alleges that Subject Judge I "has a disability and should receive mental health treatment for racial and religious discrimination and in his role of protecting [Subject Judge II]." In support of his complaint, Complainant attaches a lengthy letter detailing the alleged shortcomings and misconduct of his court-appointed attorney.¹

In his second complaint of judicial misconduct, which names only Subject Judge I, Complainant alleges that Subject Judge I incorrectly described the charges pending against Complainant during a hearing. In addition, Complainant alleges that Subject Judge I suffers from a mental disability because "for two very long years he has delayed my criminal case," but, according to Complainant, "[i]nstead of admitting that I

¹ To the extent Complainant's allegations concern a private attorney who is not a federal judge and who therefore is not subject to the Judicial Conduct and Disability Act, 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*.

understand the charges better than he does, [Subject Judge I] blames [him] for the delay in his case.”

It is readily apparent that Complainant’s allegations are largely intended to challenge decisions and rulings in his criminal proceedings – in particular, Subject Judge I’s decision to detain Complainant pending a competency determination. These 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.

To the extent Complainant presents any non-merits-related allegations, he has failed to substantiate them. Complainant offers no basis to conclude that Subject Judge I suffers a disability or that Subject Judges I and II have participated in a conspiracy against him, and the record provides no support for such allegations. Accordingly, Complainant’s 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, these complaints will be dismissed pursuant to 28 U.S.C. §§ 352(b)(1)(A)(ii) and (iii). Complainant filed at least five prior judicial misconduct complaints that were dismissed as frivolous, merits-related, and lacking in sufficient evidence to give rise to an inference of misconduct. *See* J.C. Nos. J.C. Nos. 05-06; 05-19; 03-09-90083; 03-13-90062; 03-15-90107–09. In the opinion dismissing J.C. Nos. 03-15-90107–09, Complainant was warned that future abuse of the judicial misconduct complaint procedure could result in the imposition of filing restrictions under Rule 10, *Rules for Judicial-Conduct and Judicial-Disability Proceedings*. Complainant nonetheless filed these two complaints, which once again are merits-related, frivolous, and unsupported. Accordingly, a copy of this Memorandum Opinion and Order will be transmitted to the Judicial Council to determine whether to issue an order to show cause why Complainant should not be enjoined from filing further complaints under the Judicial Conduct and Disability Act. *See* Rule 10(a), *Rules for Judicial-Conduct and Judicial-Disability Proceedings*.²

² 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.

s/ D. Brooks Smith
Chief Judge

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: November 20, 2017)

PRESENT: SMITH, *Chief Judge*.

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)(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/ D. Brooks Smith

Chief Judge

Dated: November 20, 2017