

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. No. 03-18-90054

IN RE: COMPLAINTS OF JUDICIAL MISCONDUCT
OR DISABILITY

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

MEMORANDUM OPINION

(Filed: May 14, 2018)

PRESENT: JORDAN, *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 Circuit Judge (“Subject Judge”).² For the reasons discussed below, the complaint 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 complaint may be dismissed if, after review, it is found to be not cognizable under the statute, directly related to the merits of a

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 also presents allegations concerning individuals who are not federal judges and who therefore are not subject to the Judicial Conduct and Disability Act. These 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*.

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 a District Judge dismissed for failure to state a claim. Although Complainant did not appeal the dismissal, Complainant has since filed multiple complaints of judicial misconduct naming the District Judge. *See* J.C. Nos. 03-16-90001, 03-16-90070, 03-17-90023, 03-17-90028, and 03-17-90088. Complainant also filed complaints against the Circuit Judges who thereafter issued orders dismissing the aforementioned complaints of judicial misconduct. J.C. Nos. 03-17-90022, 03-17-90027, 03-17-90086, 03-17-90087, and 03-17-90089. All of these complaints were dismissed as merits-related, frivolous, and/or unsupported. The Subject Judge in the present matter issued an order dismissing several of Complainant's complaints against other Circuit Judges.³ Rather than petition for review of that order, Complainant filed a complaint against the Subject Judge.

Complainant claims that “the judges” took sides with the “evil appellees” against Complainant and “evaded” Complainant's claims. Complainant again claims that there is “judicial warfare” against Complainant and that a default judgment should have been

³ In view of Complainant's filing of multiple complaints which were dismissed as frivolous and merits-related, the Judicial Council issued an order to show cause why Complainant's ability to file additional complaints of judicial misconduct should not be restricted in accordance with Rule 10, *Rules for Judicial-Conduct and Judicial-Disability Proceedings*. Complainant recently filed a response to the order to show cause which will be transmitted to the Judicial Council for review.

entered in his favor. Complainant also objects to the Subject Judge's dismissal of his prior complaints of judicial misconduct as "invalid."

To the extent Complainant is attempting to collaterally challenge decisions and rulings by the Subject Judge and/or other judges, 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 discrimination and racism, are likewise subject to dismissal. Complainant's allegations lack any 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 complaint repeats many of the allegations set forth in his 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, 03-17-90022, 03-17-90023, 03-17-90027, 03-17-90028, 03-17-90087, 03-17-90088, 03-17-90089.

Based on the foregoing, this complaint will be dismissed pursuant to 28 U.S.C. §§ 352(b)(1)(A)(i), (ii), and (iii). A copy of this opinion will be transmitted to the Judicial Council for consideration in conjunction with the pending order to show cause issued pursuant to Rule 10(a), *Rules for Judicial-Conduct and Judicial-Disability Proceedings*.

s/ Kent A. Jordan
Circuit Judge

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. Nos. 03-18-90054

IN RE: COMPLAINTS OF JUDICIAL MISCONDUCT
OR DISABILITY

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

ORDER

(Filed: May 14, 2018)

PRESENT: JORDAN, *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 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/ Kent A. Jordan
Circuit Judge

Dated: May 14, 2018