

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. Nos. 03-18-90056, 03-18-90057, 03-18-90058

IN RE: COMPLAINT OF JUDICIAL MISCONDUCT
OR DISABILITY

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

MEMORANDUM OPINION

(Filed: May 21, 2018)

PRESENT: SMITH, *Chief Judge*.

This is a complaint filed under the Judicial Conduct and Disability Act, 28 U.S.C. §§ 351-64, against two United States District Judges (“Subject Judge I” and “Subject Judge II”) and a Magistrate Judge (“Subject Judge III”). 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,

¹ Complainant makes various allegations concerning individuals who are not covered by the Judicial Conduct and Disability Act; i.e., unnamed staff attorneys and clerk’s office employees. Accordingly, 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*. Complainant also names a retired judge and was informed that his complaint was not accepted for filing with respect to that individual.

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, a pro se prisoner, alleges that the Subject Judges are part of a “conspiracy of preferential treatment, due to the court’s conduct with the particular ruling of [his] petitions.” Complainant’s allegations are almost entirely merits-related. For example, Complainant alleges that his motions under 28 U.S.C. § 2255 should have been granted, that the Subject Judges have a “pattern” of not giving written reasons for their decisions, that his arguments have been misconstrued, and that the merits of his claims have not been addressed. Complainant’s allegations clearly seek to collaterally attack the Subject Judges’ rulings and decisions. “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).

Accordingly, Complainant's merits-related allegations will be dismissed.

In any event, Complainant submitted approximately two hundred pages of exhibits - all of which have been reviewed - and they provide no evidence of a conspiracy or any other judicial misconduct. Specifically, it is not judicial misconduct for a district judge to adopt a magistrate judge's report and recommendation and deny a petition for a writ of habeas corpus for the reasons articulated by the magistrate judge assigned to the matter. Moreover, although Complainant may disagree with the Subject Judges' decisions, this does not constitute evidence of judicial misconduct. The remaining allegations of this complaint are therefore subject to dismissal. 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)(i), (ii), and (iii).

s/ D. Brooks Smith
Chief Judge

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ORDER

(Filed: May 21, 2018)

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.

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: May 21, 2018