

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. Nos. 03-18-90062, 03-18-90063

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”). 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 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, a frequent and prolific pro se litigant, filed a civil rights complaint on behalf of himself and purportedly on behalf of several other individuals, naming a number

of federal judges and other defendants. The matter initially was assigned to Subject Judge I, but was reassigned to Subject Judge II, who sits in another District within this Circuit. In the course of the proceeding, Complainant has filed numerous motions, including repeated requests for entry of a default judgment against the defendants. Recently, Subject Judge II issued a comprehensive memorandum opinion and order addressing many of Complainant's pending motions. Among other things, Subject Judge II declined to enter a default judgment and directed Complainant to show cause why the complaint should not be dismissed as to certain defendants who were not properly served.

This complaint of judicial misconduct is comprised of copies of several of Complainant's filings from his civil rights action, along with a copy of an opinion and correspondence pertaining to three long-concluded complaints of judicial misconduct that Complainant filed approximately five years ago. These documents are accompanied by a brief and unintelligible introductory page alleging, *inter alia*, that "[t]he Rules of Court have been weaponized" against Complainant, that he seeks a "private criminal complaint" against several Circuit Judges not named as Subject Judges of this complaint, and that three of Subject Judge II's rulings "are void!"

It appears that the reference to three of Subject Judge II's rulings reflects Complainant's disagreement with those decisions. If so, 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*. Accordingly, all merits-related allegations are subject to dismissal.

To the extent that any remaining allegations pertain to Subject Judge I or Subject Judge II at all, they do not give rise to an inference that misconduct has occurred.¹ The record in Complainant’s civil rights proceeding reveals no evidence that either Subject Judge has engaged in any form of judicial misconduct. Complainant’s remaining allegations are therefore 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). Because Complainant previously filed three complaints of judicial misconduct naming seven federal judges, Complainant’s attention is directed to Rule 10(a), *Rules for Judicial-Conduct and Judicial-Disability Proceedings*.² Future

¹ The allegations concerning Circuit Judges who were not named as Subject Judges of the complaint do not provide “reasonable grounds for inquiry” into the existence of judicial misconduct. Accordingly, no complaints will be identified against them. *See* Rule 5, *Rules for Judicial-Conduct and Judicial-Disability Proceedings*.

² Rule 10(a) of the *Rules of Judicial-Conduct and Judicial-Disability Proceedings* provides:

abuse of the judicial misconduct complaint procedure may result in the imposition of restrictions under this provision.

s/ D. Brooks Smith
Chief Judge

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.

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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)(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