

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. Nos. 03-18-90064, 03-18-90065, 03-18-90066, 03-18-90067,
03-18-90068, 03-18-90069, 03-18-90070, 03-18-90071, 03-18-90072,
03-18-90073, 03-18-90074, 03-18-90075, 03-18-90076, 03-18-90077,
03-18-90078, 03-18-90079, 03-18-90080, 03-18-90081, 03-18-90082

IN RE: COMPLAINT OF JUDICIAL MISCONDUCT
OR DISABILITY

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

MEMORANDUM OPINION

(Filed: May 8, 2018)

PRESENT: SHWARTZ, *Circuit Judge*.¹

This is a complaint filed under the Judicial Conduct and Disability Act, 28 U.S.C. §§ 351-64, against nineteen United States Circuit Judges (“Subject Judge I” through “Subject Judge XIX”).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

¹ Acting as Chief Judge pursuant to Rule 25(f), *Rules for Judicial-Conduct and Judicial-Disability Proceedings* (assigning the Chief Judge’s duties to the “most-senior active circuit judge not disqualified”).

² Complainant also named four deceased Circuit Judges. The complaint was not accepted for filing as to those Judges. *See* Rule 8(c), *Rules for Judicial-Conduct and Judicial-Disability Proceedings* (circuit clerk must not accept a complaint against a non-covered person). Accordingly, allegations concerning any deceased Circuit Judge will not be considered in this opinion

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 pro se plaintiff in a civil rights proceeding, filed an interlocutory appeal. The interlocutory appeal was dismissed for lack of appellate jurisdiction. Recently, the civil rights proceeding was dismissed for failure to state a claim upon which relief can be granted. Complainant filed an appeal from the dismissal, and that appeal remains pending.

Complainant filed this complaint of judicial misconduct shortly before his interlocutory appeal was dismissed. In its entirety, it reads: “My complaint is simply because the judges are not following the law and I’d like to have them removed and replaced. The law stat[e]s that my type of appeal must be answered within 15 days. It has been over a month.”

Inasmuch as Complainant argues that the Subject Judges are “not following the law,” the allegations are merits-related. Rule 3(h)(3)(A), *Rules for Judicial-Conduct and Judicial-Disability Proceedings* (“An allegation that calls into question the correctness of a judge’s ruling, including a failure to recuse, without more, is 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. Accordingly, all merits-related allegations are subject to dismissal.

To the extent that Complainant attempts to set forth a claim of undue delay in rendering a decision on his interlocutory appeal, delay is not generally cognizable as judicial misconduct because it effectively poses a challenge to merits of official actions by the judge – *i.e.*, the decision to assign a lower priority to a particular case. *See* 28 U.S.C. § 352(b)(1)(A)(ii); Rule 11(c)(1)(B), *Rules for Judicial-Conduct and Judicial-Disability Proceedings*; Rule 3 Commentary, *Rules for Judicial-Conduct and Judicial-Disability Proceedings*. A claim of delay in a single case may qualify as cognizable judicial misconduct only if “the allegation concerns an improper motive in delaying a particular decision” Rule 3(h)(3)(B), *Rules for Judicial-Conduct and Judicial-Disability Proceedings*. Here, Complainant alleges no improper motive. Moreover, as a factual matter, the record reveals no period of undue delay in Complainant’s interlocutory appeal. This claim is frivolous and unsupported, and is therefore subject to dismissal. 28 U.S.C. § 352(b)(1)(A)(iii); Rule 11(c)(1)(C), *Rules for Judicial-Conduct and Judicial-Disability Proceedings*.

Finally, although Complainant requests that the Subject Judges be “removed and replaced,” he does not elaborate upon this request, nor does he allege that any particular Subject Judge engaged in any cognizable form of misconduct.³ Upon review, the record

³ In addition, allegations concerning a judge’s recusal must be presented to that judge for a ruling in the first instance, and a disagreement on a ruling on a motion to recuse would be

reveals no evidence to substantiate a misconduct claim. Indeed, the vast majority of the named Subject Judges took no part whatsoever in considering Complainant's interlocutory appeal. Accordingly, any 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)(i), (ii), and (iii). Previously, Complainant filed four complaints of judicial misconduct. *See* J.C. Nos. 03-12-90042; 03-12-90045; 03-13-90006; 03-13-90010. Complainant's prior complaints were also dismissed as non-cognizable, frivolous, and unsupported. In the opinions dismissing those complaints, 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 this complaint, which once again is 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

merits-related. *See* Rule 3(h)(3)(A), *Rules for Judicial-Conduct and Judicial-Disability Proceedings*.

the Judicial Conduct and Disability Act. *See* Rule 10(a), *Rules for Judicial-Conduct and Judicial-Disability Proceedings*.⁴

s/ Patty Shwartz

Circuit Judge

⁴ 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. 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 8, 2018)

PRESENT: SHWARTZ, *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:

¹ Acting as Chief Judge pursuant to Rule 25(f), *Rules for Judicial-Conduct and Judicial-Disability Proceedings* (assigning the Chief Judge's duties to the "most-senior active circuit judge not disqualified").

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/ Patty Shwartz

Circuit Judge

Dated: May 8, 2018