

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. Nos. 03-18-90191, 03-18-90192, 03-18-90202

IN RE: COMPLAINTS OF JUDICIAL MISCONDUCT
OR DISABILITY

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

MEMORANDUM OPINION

(Filed: October 23, 2018)

PRESENT: SMITH, *Chief Judge*.

These three complaints are 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 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).

Complainant is a frequent pro se civil litigant. Two of the current complaints of judicial misconduct concern one of Complainant’s pro se civil rights complaints, which was assigned to Subject Judge I. After granting Complainant leave to proceed *in forma*

pauperis, Subject Judge I dismissed the complaint as malicious and for failure to state a claim. Because this was Complainant's third complaint concerning the same events, Subject Judge I's opinion included a warning that filing additional such cases could result in restriction of his filing privileges. Complainant appealed. The appeal remains pending.

Complainant's third complaint of judicial misconduct concerns another of his pro se civil rights complaints, which was assigned to Subject Judge II. After granting Complainant leave to proceed *in forma pauperis*, Subject Judge II dismissed the complaint for failure to state a claim. Complainant appealed. That appeal also remains pending.

In these three complaints, Complainant alleges that Subject Judges I and II "did not comply" with "the Law of this Case," acted in the "complete absence of all jurisdiction," and "ignored the common law." Complainant further alleges that Subject Judges' dismissal orders caused Complainant to "bec[o]me injured in the loss of Rights" and violated the Subject Judges' "fiduciary duty to [Complainant]." Complainant argues that Subject Judge I is corrupt and a "political hack," and that both Subject Judges I and II are not entitled to judicial immunity and should retire.

In large part, it appears that these complaints are intended to challenge the Subject Judges' orders dismissing Complainant's civil complaints. Accordingly, 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*. Indeed, Complainant is currently pursuing legal challenges to the Subject Judges' dismissal orders in his pending appeals. This administrative proceeding does not provide a second forum to litigate such claims. 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 allegations are baseless. Complainant offers no evidence to substantiate his view that the Subject Judges are corrupt, politically motivated, have violated any duty to Complainant, or have otherwise engaged in any act of judicial misconduct. The record in Complainant's proceedings reveals no basis for a conclusion that judicial misconduct has occurred. 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). Because Complainant has filed five complaints that have been dismissed as merits-related, unsupported, and frivolous within a period of three months,

Complainant's attention is directed to Rule 10(a), *Rules for Judicial-Conduct and Judicial-Disability Proceedings*.¹ Future abuse of the judicial misconduct complaint procedure may result in the imposition of restrictions under this provision.

s/ D. Brooks Smith

Chief Judge

¹ 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: October 23, 2018)

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: October 23, 2018