

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. Nos. 03-19-90043, 03-19-90048, 03-19-90049, 03-19-90050

IN RE: COMPLAINT OF JUDICIAL MISCONDUCT
OR DISABILITY

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

MEMORANDUM OPINION

(Filed: September 25, 2019)

PRESENT: SMITH, *Chief Judge*.

These complaints are filed under the Judicial Conduct and Disability Act, 28 U.S.C. §§ 351-64, against three United States District Judges (“Subject Judge I,” “Subject Judge II,” and “Subject Judge III”) and a United States Magistrate Judge (“Subject Judge IV”).¹ 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

¹ To the extent Complainant’s allegations concern Clerk’s office employees and other individuals who are not federal judges, they will not be addressed in this opinion. Only federal judges are covered by the Judicial Conduct and Disability Act. *See* 28 U.S.C. §§ 351, 352(b)(1)(A)(i); Rule 1(b), *Rules for Judicial-Conduct and Judicial-Disability Proceedings*.

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 alleges that Subject Judge I acted with bias and malice and engaged in collusion with Subject Judge IV. Complainant further seeks the recusal of Subject Judge I and Subject Judge IV. Complainant also alleges that the Subject Judges have attempted to dismiss his civil cases. Complainant challenges various specific rulings, including Subject Judge IV's reports and recommendations, Subject Judge IV's denial of a motion to serve a complaint against the district court clerk, Subject Judge IV's refusal to appoint attorneys for prisoners, and Subject Judge I's treatment of a complaint as a supplement.

Complainant also appears to complain that Subject Judge II and Subject Judge III should not have permitted the district court clerk to docket a prior complaint of judicial misconduct as a civil action. Finally, Complainant contends that the Subject Judges' actions constitute a pattern of bias.

It is evident that Complainant seeks to collaterally attack the Subject Judges' decisions and procedural rulings. Allegations that question the correctness of judicial rulings do not constitute cognizable misconduct under the Judicial Conduct and Disability Act. Rule 4(b)(1), *Rules for Judicial-Conduct and Judicial-Disability Proceedings* ("Cognizable misconduct does not include an allegation that calls into question the correctness of a judge's ruling, including a failure to recuse."). Complainant's merits-related allegations therefore will be dismissed. *See* 28 U.S.C. § 352(b)(1)(A)(ii); Rules 4(b)(1), 11(c)(1)(B), *Rules for Judicial-Conduct and Judicial-Disability Proceedings*.

To the extent Complainant alleges that the Subject Judges had an improper motive or bias for their rulings and decisions, Complainant's allegations are likewise subject to dismissal. Nor is there any evidence of improper collusion. The records of Complainant's underlying civil actions have been reviewed and there is no evidence of judicial misconduct. Accordingly, the complaints are dismissed as frivolous and unsupported by sufficient evidence to 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*.

For the foregoing reasons, the complaints are 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: September 25, 2019)

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)(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: September 25, 2019