

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. Nos. 03-19-90023, 03-19-90024,
03-19-90025, 03-19-90026, 03-19-90027

IN RE: COMPLAINT OF JUDICIAL MISCONDUCT
OR DISABILITY

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

MEMORANDUM OPINION

(Filed: May 17, 2019)

PRESENT: McKEE, *Circuit Judge*.¹

This complaint is filed under the Judicial Conduct and Disability Act, 28 U.S.C. §§ 351-64, against a United States District Judge (“Subject Judge I”) and four United States Circuit Judges (“Subject Judge II” through “Subject Judge V”).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 The complaint also sets forth allegations concerning a state court judge and a retired District Judge. Neither state court judges nor federal judges no longer holding office are subject to 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*; Rule 8(c), *Rules for Judicial-Conduct and Judicial-Disability Proceedings*. Accordingly, no complaint was docketed as to the retired District Judge, and the allegations concerning the state court judge and retired District Judge will not be considered.

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).

Although this lengthy complaint of judicial misconduct is difficult to decipher, it appears to primarily concern two of Complainant’s numerous pro se proceedings. In the first matter, Complainant filed a complaint against a large company concerning a billing dispute. The matter was assigned to Subject Judge I, who dismissed Complainant’s federal claim for failure to state a claim and remanded Complainant’s state claims to state court. Complainant appealed, and a panel comprised of Subject Judges II, III, and IV affirmed the judgment. In the second matter, Complainant filed a civil rights complaint against a senator. Subject Judge I dismissed the matter without prejudice for failure to effect service. Complainant appealed, and the appeal was dismissed for failure to pay the filing fee.

Complainant raises several disputes with the merits of rulings in his District Court and appellate proceedings. Among other things, Complainant contends that Subject Judge I “prevented [him] from testifying” in the first proceeding. In addition, he alleges that fifteen of his appellate submissions in the first appeal may not have been considered by Subject Judges II, III, and IV, because he was advised that the matter would be submitted “on Appellant’s brief only.”³ Complainant further alleges that Subject

³ Defense counsel subsequently entered an appearance and filed a brief.

Judges II, III, and IV committed errors in their memorandum opinion by relying on an inapposite statute, and that they incorrectly denied rehearing. In addition, Complainant alleges that the second appeal was improperly dismissed because “ALL known filing FEES were timely paid.” Because these allegations contest judicial rulings, they do not constitute cognizable misconduct under the Judicial Conduct and Disability Act. *See* 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*.

Apart from the merits-related allegations, Complainant alleges that the five named Subject Judges have engaged in myriad forms of misconduct, including “willful and criminal misconduct,” “corruption,” “materially false statement[s],” “witness intimidation,” “abuse of authority,” “conflicts of interest,” and other impropriety. Complainant has not, however, coherently explained the factual basis for any of these allegations. A careful review of the record provides no support for an inference that judicial misconduct has occurred. Accordingly, such 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*.

Next, Complainant alleges that Subject Judge I, as well as other court employees,⁴ “willfully” misspelled Complainant’s name. Specifically, it appears that Complainant spells his first name with two initial capital letters, while certain court documents employ only a single initial capital letter. Apart from Complainant’s personal suspicion, however, there is no indication whatsoever that this error was “willful.” Accordingly, this allegation will be dismissed. *See* 28 U.S.C. § 352(b)(1)(A)(iii); Rule 11(c)(1)(C), (D), *Rules for Judicial-Conduct and Judicial-Disability Proceedings*.

Finally, Complainant includes a lengthy objection to the requirement that a complaint of judicial misconduct must be “verified in writing under penalty of perjury” pursuant to Rule 6(d), *Rules for Judicial-Conduct and Judicial-Disability Proceedings*. Complainant contends that the “unlawful threat” of perjury infringes on his constitutional rights. A judicial misconduct proceeding is not the appropriate forum for challenging the procedural requirements of the *Rules for Judicial-Conduct and Judicial-Disability Proceedings*. Because allegations disputing the legitimacy of the Rules do not set forth a claim of cognizable judicial misconduct, they are subject to dismissal. *See* Rule 4(a), *Rules for Judicial-Conduct and Judicial-Disability Proceedings* (defining cognizable misconduct); 28 U.S.C. § 352(b)(1)(A)(i).

Based on the foregoing, this complaint will be dismissed pursuant to 28 U.S.C. § 352(b)(1)(A)(i), (ii), and (iii).

⁴ Allegations concerning court employees who are not judges, and therefore not subject to the Judicial Conduct and Disability Act, will not be considered. *See* 28 U.S.C. §§ 351, 352(b)(1)(A)(i); Rule 1(b), *Rules for Judicial-Conduct and Judicial-Disability Proceedings*.

s/ Theodore A. McKee

Circuit Judge

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ORDER

(Filed: May 17, 2019)

PRESENT: McKEE, *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:

Rule 18(a) Petition. A complainant or subject judge may petition the Judicial Council of the Third Circuit for review.

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(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/ Theodore A. McKee
Circuit Judge

Dated: May 17, 2019