

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. Nos. 03-20-90085, 03-21-90006

IN RE: COMPLAINT OF JUDICIAL MISCONDUCT
OR DISABILITY

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

MEMORANDUM OPINION

(Filed: February 17, 2021)

PRESENT: SMITH, *Chief Judge*.

This opinion concerns two complaints filed under the Judicial Conduct and Disability Act, 28 U.S.C. §§ 351-64, against a United States District Judge (the “Subject Judge”). 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 makes allegations concerning the putative actions of an attorney, state court judges, and a car dealership owner, among others. Complainant filed federal civil suits naming these individuals that were dismissed by the Subject Judge. To the extent

Complainant seeks to assert the same allegations in the present administrative proceedings, his allegations cannot be addressed because these individuals are not subject to the Judicial Conduct and Disability Act. 28 U.S.C. § 352(b)(1)(A)(i); Rule 1, *Rules for Judicial-Conduct and Judicial-Disability Proceedings*.

With respect to the remaining allegations in the complaint, it is evident that Complainant seeks to collaterally attack the Subject Judge's decisions in his civil suits. Allegations disputing the merits of judicial rulings do not constitute cognizable misconduct under the Judicial Conduct and Disability Act. "Cognizable misconduct does not include an allegation that calls into question the correctness of a judge's ruling, including a failure to recuse." Rule 4(b)(1), *Rules for Judicial-Conduct and Judicial-Disability Proceedings*. Merits-related allegations are not cognizable as misconduct because 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). Thus, all such non-cognizable allegations are subject to dismissal. *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 that Complainant's allegations are not based solely on the merits of the Subject Judge's rulings, they are unsubstantiated. Other than his disagreement with the Subject Judge's dismissal of his civil suits, Complainant provides no evidence of bias,

fraud, discrimination, deceit, or conspiracy on the part of the Subject Judge, and the records for his underlying civil suits reveal no evidence to support such claims.

Complainant's remaining allegations are therefore subject to dismissal as frivolous and unsupported by evidence that would raise an inference that misconduct has occurred. *Id.*

Based on the above, this complaint will be dismissed under 28 U.S.C.

§ 352(b)(1)(A)(i), (ii), and (iii). As Complainant has filed two complaints against the same Subject Judge containing repetitive and frivolous allegations of judicial misconduct, Complainant is hereby cautioned in accordance with Rule 10, *Rules for Judicial-Conduct and Judicial-Disability Proceedings*.¹

s/ D. Brooks Smith
Chief Judge

¹ Rule 10(a) of the *Rules for 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: February 17, 2021)

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: February 17, 2021