

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. Nos. 03-20-90011, 03-20-90012, 03-20-90013

IN RE: COMPLAINT OF JUDICIAL MISCONDUCT
OR DISABILITY

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

MEMORANDUM OPINION

(Filed: April 10, 2020)

PRESENT: SMITH, *Chief Judge*.

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

In 2017, Complainant filed a pro se appeal from a District Court order granting summary judgment to the defendant in Complainant’s employment discrimination

proceeding. The appeal was assigned to a panel comprised of Subject Judges I, II, and III. The Subject Judges affirmed the District Court’s judgment, the Court of Appeals denied en banc rehearing, and the mandate issued. Complainant moved to recall the mandate in order to correct the opinion. The Subject Judges denied the motion to recall the mandate as well as Complainant’s subsequent motion for reconsideration of the denial.

In this complaint of judicial misconduct, Complainant states, “[t]he Appeals court made a lot of mistakes.” Complainant then recounts the allegations of discrimination from his District Court proceeding and provides copies of various documents that were submitted to the District Court in the course of that proceeding.

Clearly, Complainant disagrees with the resolution of his employment discrimination appeal. Such a merits-related disagreement does not constitute cognizable misconduct. “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). Accordingly, Complainant’s 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*.

Complainant does not identify any specific action by any of the three Subject Judges that could constitute cognizable misconduct. A review of the record reveals no basis for a misconduct claim. Accordingly, to the extent Complainant presents any non-merits-related allegations, they 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)(ii) and (iii). This is Complainant's second complaint against these three Subject Judges, presenting similar claims concerning Complainant's discrimination appeal.¹ See J.C. Nos. 03-19-90054, 03-19-90055, 03-19-90056. The first complaint also was dismissed as merits-related, unsupported, and frivolous. Complainant's attention is therefore directed to Rule 10(a), *Rules for Judicial-Conduct and Judicial-Disability Proceedings*.² Future abuse of the judicial misconduct complaint procedure may result in the imposition of restrictions pursuant to this provision.

¹ The current complaint refers to the prior complaint at J.C. Nos. 03-19-90054 through 56. To the extent Complainant intended to supplement the complaint in that prior proceeding, it is noted that the Judicial Council denied Complainant's petition for review on February 4, 2020, and the matter is concluded.

² Rule 10(a) of the *Rules for Judicial-Conduct and Judicial-Disability Proceedings* provides:

s/ D. Brooks Smith

Chief Judge

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: April 10, 2020)

PRESENT: SMITH, *Chief Judge*.

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)(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: April 10, 2020