

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

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J.C. Nos. 03-21-90044, 03-21-90045, 03-21-90046, 03-21-90047, and 03-21-90048

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IN RE: COMPLAINT OF JUDICIAL MISCONDUCT  
OR DISABILITY

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

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MEMORANDUM OPINION

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(Filed: September 16, 2021)

PRESENT: McKee, *Circuit Judge*.

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

The present complaints are very difficult to understand, but it appears that Complainant alleges Subject Judge I “threw out” his case for no reason, does not answer motions, and allows defendants to “violate” his rights. He further alleges that Subject Judges II and III are giving workers “fake immunity,” refused de novo review, and “threw out” his appeal for no reason. Complainant also alleges that Subject Judge IV did not answer four motions and Subject Judge V failed to respond to letters.<sup>1</sup>

It is apparent that the majority of Complainant’s allegations reflect dissatisfaction with the merits of judicial decisions and rulings. Allegations disputing the merits of judicial rulings do not, however, 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*. 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

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<sup>1</sup> Complainant also complains about the actions of a District Judge and Magistrate Judge. Neither judge has been named as a Subject Judge. I considered Complainant’s merits-related and frivolous allegations pursuant to Rule 5 of the *Rules for Judicial-Conduct and Judicial-Disability Proceedings* and I decline to identify a complaint regarding these two judges.

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*.<sup>2</sup>

To the extent Complainant's allegations are not merits-related, they are baseless. A review of the record reveals no evidence for the existence of a conspiracy, bias, or other judicial misconduct. Complainant has filed multiple appeals and numerous letters which have been docketed. With respect to three of his appeals, the clerk's office issued an order directing him to request relief by formal motion and providing him an extension of time to file a brief, which he has now done so.<sup>3</sup> With respect to three other appeals, orders were entered summarily affirming the District Court. A seventh appeal was dismissed for lack of jurisdiction and an eighth appeal remains pending at this time. Thus, 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*.

In view of the frivolous and merits-related nature of Complainant's allegations, Complainant is cautioned pursuant to Rule 10 of the *Rules for Judicial-Conduct and*

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<sup>2</sup> Complainant's allegations concerning individuals who are not federal judges, such as clerk's office and circuit executive's office employees, cannot be addressed in these proceedings because only federal judges are subject to the Judicial Conduct and Disability Act. *See* 28 U.S.C. §§ 351, 352(b)(1)(A)(i); Rule 4, *Rules for Judicial-Conduct and Judicial-Disability Proceedings*. Complainant also filed separate complaints of employee misconduct and his allegations will be addressed in those proceedings.

<sup>3</sup> Case related correspondence must be filed with the clerk's office and not sent directly to judges.

*Judicial-Disability Proceedings*.<sup>4</sup> Notably, the clerk’s office has issued an order directing Complainant not to call because his “telephone calls have become increasingly abusive and harassing, including unnecessary disparaging remarks directed to the Court and its staff . . . .”

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

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s/ Theodore A. McKee  
Circuit Judge

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<sup>4</sup> Rule 10(a) of the *Rules for Judicial-Conduct and Judicial-Disability Proceedings* provides:

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

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(Filed: September 16, 2021)

PRESENT: McKee, *Circuit 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 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.

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](http://www.ca3.uscourts.gov).

s/ Theodore A. McKee  
Circuit Judge

Dated: September 16, 2021