

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. Nos. 03-22-90035, 03-22-90036, 03-22-90037, 03-22-90038, 03-22-90039

IN RE: COMPLAINT OF JUDICIAL MISCONDUCT
OR DISABILITY

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

MEMORANDUM OPINION

(Filed: August 30, 2022)

PRESENT: McKEE, Circuit Judge.

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 Judges II, III, IV, and V).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,

¹ Subject Judge I is now a federal judge sitting on another court. As the complaint concerns Subject Judge I’s alleged actions while he was still sitting on a court within the Third Circuit, the complaint was accepted for filing as to this judge because the present circumstances are analogous to those of a Subject Judge sitting in another court by designation. See Rules 7(b) (addressing misconduct in another circuit while a subject judge is sitting by designation), 8(a) (requiring clerk to accept for filing a complaint against a judge filed under Rule 6), Rules for Judicial-Conduct and Judicial-Disability Proceedings.

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 is a pro se prisoner who complains that Subject Judge I should have granted him a certificate of appealability and should not have denied a stay, among other claims. Complainant further alleges that Subject Judge II should not have dismissed his prior complaint of judicial misconduct against Subject Judge I (J.C. No. 03-21-90075). In addition, he claims that Subject Judges III, IV, and V should have granted a certificate of appealability on appeal.

To the extent Complainant's allegations reflect his disagreement with the Subject Judges' rulings in Complainant's habeas, appellate, and judicial misconduct proceedings, the allegations are merits related. Merits-related allegations do not constitute cognizable misconduct. 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."); see also Commentary on Rule 4 ("The phrase 'decision or procedural ruling' is not limited to rulings issued in deciding Article III cases . . . a complaint challenging the correctness of a chief judge's determination to dismiss a prior misconduct complaint would be properly dismissed as merits-related . . ."). Such 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's non-merits-related allegations, including his allegations of prejudice, improper motive, retaliation, and conspiracy, are baseless. Other than his disagreement with the Subject Judges' rulings, Complainant provides no support for his allegations. Accordingly, Complainant's remaining allegations are subject to dismissal as 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)(D), Rules for Judicial-Conduct and Judicial-Disability Proceedings. Complainant is cautioned pursuant to Rule 10 of the Rules for Judicial-Conduct and Judicial-Disability Proceedings that continued filing of repetitive, harassing, or frivolous complaints may result in the imposition of restrictions pursuant to this provision.

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

s/ Theodore A. McKee
Circuit Judge

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ORDER

(Filed: August 30, 2022)

PRESENT: McKEE, Circuit 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/ Theodore A. McKee
Circuit Judge

Dated: August 30, 2022