

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. No. 03-17-90065

IN RE: COMPLAINT OF JUDICIAL MISCONDUCT
OR DISABILITY

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

MEMORANDUM OPINION

(Filed: November 20, 2017)

PRESENT: SMITH, *Chief Judge*.

This is a complaint 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.¹

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

¹ To the extent that Complainant makes allegations regarding the conduct of individuals who are not subject to the Judicial Conduct and Disability Act, such as an attorney and the U.S. Marshals, his allegations will not be addressed in this opinion. See 28 U.S.C. §§ 351, 352(b)(1)(A)(i); Rule 4, *Rules for Judicial-Conduct and Judicial-Disability Proceedings*.

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 the present proceeding, Complainant repeats the same allegations that he made in a prior complaint against the Subject Judge (J.C. No. 03-13-90061) regarding her putative failure to discipline or otherwise take action concerning an attorney who “violated applicable rules of professional conduct.” Complainant’s allegations in J.C. No. 03-13-90061 were dismissed as frivolous, unsupported by sufficient evidence to raise an inference of misconduct, and merits-related. Complainant’s allegations are subject to dismissal on these same grounds in the present proceeding. *See* 28 U.S.C. § 352(b)(1)(A)(ii), (iii). Rules 3(h)(3)(A), 11(c)(1)(B), 11(c)(1)(C), 11(c)(1)(D), *Rules for Judicial-Conduct and Judicial-Disability Proceedings*. Furthermore, Complainant’s complaint does not contain any “material information not previously considered.” Rule 11(c)(2), *Rules for Judicial-Conduct and Judicial-Disability Proceedings*.

To the extent Complainant attempts to collaterally challenge any of the Subject Judge’s subsequent rulings in his civil actions, Complainant’s allegations are subject to dismissal as merits-related. “An allegation that calls into question the correctness of a judge’s ruling, including a failure to recuse, without more, is merits-related.” Rule 3(h)(3)(A), *Rules for Judicial-Conduct and Judicial-Disability Proceedings*. Merits-related allegations do not constitute cognizable misconduct under the Judicial Conduct and Disability Act. *See* 28 U.S.C. § 352(b)(1)(A)(ii); Rules 3(h)(3)(A), 11(c)(1)(B), *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).²

Complainant further complains about the Subject Judge’s putative delay in one of his lawsuits. These allegations are dismissed as merits-related. 28 U.S.C. § 352(b)(1)(A)(ii). *See also* Rules 3(h)(3)(A), 3(h)(3)(B) (cognizable misconduct does not include “an allegation about delay in rendering a decision or ruling, unless the allegation concerns an improper motive in delaying a particular decision or habitual delay in a significant number of unrelated cases”), 11(c)(1)(B), *Rules for Judicial-Conduct and Judicial-Disability Proceedings*. To the extent Complainant suggests there was an improper motive for the alleged delay, his allegations are dismissed pursuant to 28 U.S.C. § 352(b)(1)(A)(iii) as unsupported by any evidence that would raise an inference that misconduct occurred. For example, Complainant makes the outrageous suggestion that the Subject Judge had the “evil plan” of combining his cases and destroying them before trial. These allegations are completely baseless.

² Prior to filing the present complaint of judicial misconduct, Complainant filed a motion to recuse the Subject Judge. This motion has since been dismissed as moot because the Subject Judge is no longer assigned to Complainant’s case.

Complainant also makes allegations about the Subject Judge's political donations that she made as a private citizen before becoming a federal judge. Complainant provides no evidence of anything improper about her donations, and, in any event, the Subject Judge's actions taken prior to becoming a federal judge are not subject to the Judicial Conduct and Disability Act. Accordingly, these allegations are dismissed pursuant to 28 U.S.C. § 352(b)(1)(A)(i) and (iii).

Complainant further alleges that the Subject Judge's actions "illustrate an unjustified hostility and bias toward plaintiffs including civil rights and employment law, as well as many other major problems." In support of this allegation, Complainant states that the Subject Judge has "had one case after another reversed" and that he "cannot see a single solitary state or federal based habeas corpus [the Subject Judge] has granted." Complainant provides a list of cases that he claims supports this allegation and relies on mathematical "probabilities." The appellate opinions regarding the cases listed by Complainant have been reviewed and they do not support Complainant's allegations of bias and hostility. Indeed, none of the Third Circuit Court of Appeals panels suggested that the Subject Judge's decisions were motivated by some improper motive or bias. Thus, Complainant's allegations are dismissed 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*.

Complainant also alleges that the Subject Judge retaliated against Complainant when she “commanded” the U.S. Marshals to go “after” him in the courthouse library for “evil reasons.” Complainant appears to contend that the U.S. Marshals approached him in the courthouse library at the Subject Judge’s direction because the U.S. Marshals were informed that Complainant had previously called the Subject Judge’s Chambers and cursed at a law clerk. The U.S. Marshals are responsible for protecting federal judges. There is no evidence that the Subject Judge acted improperly in any way or, for that matter, directed the U.S. Marshals to engage in improper behavior.³ Complainant’s allegations of judicial misconduct are dismissed as frivolous and unsupported by any 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*.

Finally, given the frivolous and merits-related nature of Complainant’s current and prior allegations, his attention is directed to Rule 10(a), *Rules for Judicial-Conduct and Judicial-Disability Proceedings*.⁴

³ Complaints about any alleged improper conduct on the part of the U.S. Marshals may be filed directly with that office.

⁴ Rule 10(a), *Rules for Judicial-Conduct and Judicial-Disability Proceedings*, states:

- (a) 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

Based on the foregoing, this complaint will be dismissed pursuant to 28 U.S.C.

§§ 352(b)(1)(A)(i), (ii), and (iii).

s/ D. Brooks Smith
Chief Judge

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: November 20, 2017)

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)(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: November 20, 2017