

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. Nos. 03-17-90073, 03-17-90074, 03-17-90075

IN RE: COMPLAINT OF JUDICIAL MISCONDUCT
OR DISABILITY

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

MEMORANDUM OPINION

(Filed: November 29, 2017)

PRESENT: McKEE, *Circuit Judge*.¹

This is a complaint filed under the Judicial Conduct and Disability Act, 28 U.S.C. §§ 351-64, against a District Court judge and two judges of the United States Court of Appeals for the Third Circuit (“Subject Judge I,” “Subject Judge II,” and “Subject Judge III”). For the reasons discussed below, the complaint will be dismissed.²

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 Acting pursuant to Rule 25, *Rules for Judicial-Conduct and Judicial-Disability Proceedings*.

² Complainant previously filed a prior complaint naming Subject Judge I and two other judges. J.C. Nos. 03-16-90084, 03-16-90085, and 03-16-90086. This complaint was dismissed as merits-related, frivolous, and unsupported by evidence that would raise an inference that misconduct occurred.

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 a number of allegations regarding the conduct of state court judges and other defendants in her underlying civil matters. These individuals are not covered by 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*. Accordingly, these allegations will not be addressed in this opinion.

Complainant's allegations seek to challenge decisions and rulings rendered by the Subject Judges, and are therefore merits-related. For example, Complainant complains about Subject Judge I's failure to grant any of her motions for summary judgment and his refusal to recuse himself. Complainant also complains about Subject Judge II's dismissal of her prior complaint of judicial misconduct. Furthermore, Complainant complains about Subject Judge III's actions in her appeal. However, allegations that call "into question the correctness of a judge's ruling, including a failure to recuse, without more [are] 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). Accordingly, Complainant’s merits-related allegations will be dismissed.

Complainant further alleges that Subject Judge I has engaged in improper delay in numerous cases based on “improper motives.” These allegations of delay 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 putative delay, her 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.

Finally, Complainant alleges that the Subject Judges are biased against her and are conspiring against her. The records in Complainant’s various cases have been reviewed and there is no evidence of any judicial misconduct. Complainant’s 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*.

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

§§ 352(b)(1)(A)(i), (ii), and (iii).

s/ Theodore A. McKee
Circuit Judge

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ORDER

(Filed: November 29, 2017)

PRESENT: McKee, *Circuit Judge*.¹

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.

¹ Acting pursuant to Rule 25, *Rules for Judicial-Conduct and Judicial-Disability Proceedings*.

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: November 29, 2017