

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. Nos. 03-18-90021, 03-18-90022, 03-18-90031, 03-18-90032,
03-18-90033, 03-18-90034, 03-18-90035, 03-18-90036,
03-18-90037, 03-18-90038, 03-18-90039, 03-18-90040, 03-18-90041,
03-18-90042, 03-18-90043, 03-18-90044, 03-18-90045, 03-18-90046,
03-18-90047, 03-18-90048, 03-18-90049

IN RE: COMPLAINT OF JUDICIAL MISCONDUCT
OR DISABILITY

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

MEMORANDUM OPINION

(Filed: April 11, 2018)

PRESENT: SHWARTZ, *Circuit Judge*.¹

These complaints were filed under the Judicial Conduct and Disability Act, 28 U.S.C. §§ 351-64, against two United States District Judges (“Subject Judge I” and “Subject Judge II”) and nineteen United States Circuit Judges (“Subject Judge III” through “Subject Judge XXI”). Complainant alleges that defendants “keep opening up [this case] . . . over and over again” and he requests appointment of counsel and lie detector tests for defendants. In addition, Complainant requests that the Subject Judges be

¹ Acting as Chief Judge pursuant to Rule 25(f), *Rules for Judicial-Conduct and Judicial-Disability Proceedings* (assigning the Chief Judge’s duties to the “most-senior active circuit judge not disqualified”).

“removed” and “impeached” and contends that they are racially biased against him. Complainant further suggests that the Subject Judges are disabled, without providing any support for his allegations. 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 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 basis for Complainant’s allegations in the present complaints is not clear. Complainant’s primary focus appears to be a civil suit he filed in the late 1980s alleging assault and battery and wrongful death. Following a jury trial, the District Court entered judgment against him. In the last year, Complainant filed additional motions in this District Court case including a motion for a new trial, motion for appointment of counsel, and motion for default judgment. Complainant is currently appealing Subject Judge I’s order denying his motions and this appeal remains pending.

² As a preliminary matter, Complainant makes various allegations concerning individuals who are not covered by the Judicial Conduct and Disability Act; i.e., defendants. Accordingly, these 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*. Also, Complainant named several judges who are now deceased; he was notified that his complaints were not accepted for filing as to those judges.

Complainant's complaint form also references the docket number for an unsuccessful appeal he filed seeking review of Subject Judge II's decision dismissing his pro se complaint seeking monetary damages against a mail department. A panel of the Court of Appeals affirmed the judgment. Complainant filed a petition for rehearing, which Subject Judges III, VII, VIII, XI, XII, XIII, IX, XIV, XV, and XVIII and several other Circuit Judges denied. Other than listing the docket number for this appeal on his complaint form, Complainant makes no allegations about this matter.³

Although Complainant's allegations are unclear, Complainant appears to seek to collaterally attack the Subject Judges' rulings. Such allegations are merits-related. "An allegation that calls into question the correctness of a judge's ruling, . . . 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

³ I sat on the panel which affirmed the District Court's judgment, along with Subject Judges VIII and XVIII. Complainant, however, has not named me as a Subject Judge in these proceedings. I have chosen not to be disqualified from consideration of this complaint because proceedings under the Judicial Conduct and Disability Act are considered separate administrative proceedings and, as stated above, Complainant makes no allegations about the appeal other than to list the docket number on his complaint form. In any event, merits-related allegations are not cognizable under the Judicial Conduct and Disability Act.

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). Complainant's merits-related allegations will therefore be dismissed.

In any event, the record reveals no evidence to support a claim that any of the Subject Judges have engaged in judicial misconduct or are otherwise biased against Complainant. Indeed, most of the Subject Judges have had no involvement at all with Complainants' pending appeal. Accordingly, all remaining allegations are subject to dismissal as frivolous and unsupported by evidence that would raise an inference that misconduct has occurred or that a disability exists. 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, the complaints will be dismissed pursuant to 28 U.S.C. §§ 352(b)(1)(A)(i), (ii), and (iii). Given the merits-related and frivolous nature of the allegations of the complaints, which name numerous judges, Complainant's attention is directed to Rule 10(a), *Rules for Judicial-Conduct and Judicial-Disability Proceedings*.⁴

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

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.

Future abuse of the judicial misconduct complaint procedure may result in the imposition of restrictions under this provision.

s/ Patty Shwartz
Circuit Judge

Upon written request of the complainant, the judicial council may revise or withdraw any prohibition, restriction, or condition previously imposed.

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IN RE: COMPLAINT OF JUDICIAL MISCONDUCT
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ORDER

(Filed: April 11, 2018)

PRESENT: SHWARTZ, *Circuit Judge*.¹

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 are 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:

¹ Acting as Chief Judge pursuant to Rule 25(f), *Rules for Judicial-Conduct and Judicial-Disability Proceedings* (assigning the Chief Judge's duties to the "most-senior active circuit judge not disqualified").

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/ Patty Shwartz
Circuit Judge

Dated: April 11, 2018