

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. Nos. 03-18-90084, 03-18-90085, 03-18-90086

IN RE: COMPLAINT OF JUDICIAL MISCONDUCT
OR DISABILITY

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

MEMORANDUM OPINION

(Filed: May 30, 2018)

PRESENT: SMITH, *Chief Judge*.

This is a complaint 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 a United States Magistrate Judge (“Subject Judge III”). 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, 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 filed a pro se civil rights complaint. The matter was assigned to Subject Judge II, who referred it to Subject Judge III. Soon after filing, Complainant filed

a request for a reassignment to a new docketing clerk on grounds that there were several minor docketing errors. Subject Judge I, who did not otherwise participate in Complainant's proceeding, issued an order declining to act on the request on grounds that the allegations in the motion were either factually inaccurate or already had been addressed. After Complainant filed an amended complaint, the parties filed cross-motions for judgment on the pleadings and the defendants filed a motion to dismiss. Subject Judge II determined that the claims in the complaint were time-barred and statutorily deficient, and therefore granted the defendants' motions to dismiss and for judgment on the pleadings. Complainant appealed, and the appeal is pending.

In this complaint of judicial misconduct, Complainant recounts some of the minor docketing errors that prompted him to file the request for reassignment to a new docketing clerk and complains that, contrary to Subject Judge I's order, the docketing errors were not adequately addressed.¹ In addition, Complainant identifies a period after the parties filed dispositive motions during which time "the Court intentionally stalled and remained mum upon inquiry." Complainant also contests Subject Judge II's dismissal of his complaint, arguing that the complaint "meet[s] or exceed[s] the requirements of the Federal Rules of Civil Procedure and provided adequate grounds for pursuing discovery," and that the dismissal constitutes "case dumping" and was ordered without good cause in

¹ To the extent Complainant's allegations imply misconduct on the part of a docketing clerk, such allegations will not be considered in this opinion. Docketing clerks are not federal judges and therefore are not 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*.

order to “thwart[] discovery.” Finally, Complainant claims he has been deprived of the right to a fair trial and contends his case would have received better treatment in a District Court outside of this Circuit.

“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*. The allegations of this complaint are largely merits-related, as they reflect an attempt to collaterally challenge both Subject Judge I’s decision denying the request for reassignment of a docketing clerk and Subject Judge II’s decision to dismiss the complaint.² 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*.

Complainant is pursuing an appeal, which is the proper forum in which to raise challenges to the merits of the Subject Judges’ decisions. 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.” *See 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, all merits-related allegations are subject to dismissal.

² It is noted that, although Complainant contends that his case should have proceeded in another District Court, Complainant did not move for a change of venue. If he had, however, any ruling upon such a motion would similarly be merits-related.

To the extent Complainant’s allegation that his proceeding “stalled and remained mum” is intended to set forth a claim of undue delay, this allegation is entirely baseless. The docket in Complainant’s proceeding reflects no period of undue delay. Because there is no evidence that the proceeding “stalled” at any juncture, this allegation is 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/ D. Brooks Smith
Chief Judge

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ORDER

(Filed: May 30, 2018)

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: May 30, 2018