

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. No. 03-20-90035

IN RE: COMPLAINT OF JUDICIAL MISCONDUCT
OR DISABILITY

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

MEMORANDUM OPINION

(Filed: September 15, 2020)

PRESENT: SMITH, *Chief Judge*.

This complaint is 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 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).

¹ Complainant has filed several prior complaints which were all dismissed as merits-related and/or frivolous. J.C. Nos. 03-18-90029, 03-18-90030, 03-18-90163, and 03-18-90189. Two of the complaints (J.C. Nos. 03-18-90030 and 03-18-90163) named the Subject Judge.

Complainant, an incarcerated three-striker, has filed several civil actions, which are pending before the Subject Judge.² Complainant has asserted imminent danger and alleges that, in the course of his civil suit, the Subject Judge has ignored the prevailing laws. Complainant further alleges that he was not given enough time to respond to a stay motion. Complainant, moreover, predicts that the Subject Judge will dismiss his case.

It is apparent that Complainant's allegations reflect his disagreement with the merits of the Subject Judge's judicial decisions and rulings. Allegations disputing the merits of judicial rulings do not, however, constitute cognizable misconduct under the Judicial Conduct and Disability Act. "Cognizable misconduct does not include an allegation that calls into question the correctness of a judge's ruling, including a failure to recuse." Rule 4(b)(1), *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 non-cognizable 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*.

Furthermore, Complainant appears to rely on a pending appeal in another Circuit in

² Complainant makes allegations concerning individuals who are not subject to the Judicial Conduct and Disability Act, such as the defendants and the government attorneys. These allegations cannot be addressed in these proceedings. *See* 28 U.S.C. §§ 351, 352(b)(1)(A)(i); Rule 4, *Rules for Judicial-Conduct and Judicial-Disability Proceedings*,

support of his claims. Notably, however, the appellate panel in that matter recently denied Complainant's request to proceed *in forma pauperis* on appeal.³

Complainant also complains about putative delay in one of his civil matters. These allegations are dismissed as merits-related. 28 U.S.C. § 352(b)(1)(A)(ii). *See also* Rule 4(b)(2) (“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, 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. In any event, the record reflects that, in the case complained of, a stay was granted pending disposition of the defendant's motion to revoke Complainant's *in forma pauperis* status. There is no evidence of any improper motive on the part of the Subject Judge.

A review of the record, moreover, reveals no basis for Complainant's other allegations, including his allegations of bias, favoritism, and conspiracy. Accordingly, Complainant's remaining 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*.

³ I express no opinion as to the merits of Complainant's civil actions in the present separate administrative proceeding.

Based on the foregoing, this complaint will be dismissed pursuant to 28 U.S.C. § 352(b)(1)(A)(i), (ii), and (iii). Complainant previously filed several complaints of judicial misconduct, all of which were dismissed as merits-related, unsupported, and frivolous. *See* J.C. Nos. 03-18-90029, 03-18-90030, and 03-18-90163. Complainant was therefore cautioned in J.C. No. 03-18-90163 that future abuse of the judicial misconduct complaint procedure could result in the imposition of restrictions under this provision. *See* Rule 10(a), *Rules for Judicial-Conduct and Judicial-Disability Proceedings*.⁴ Complainant nonetheless filed J.C. No. 03-18-90189, and subsequently the present complaint, both of which are frivolous and merits-related. For these reasons, because it appears that Complainant is engaged in abuse of the complaint procedure, a copy of this Memorandum Opinion and Order will be transmitted to the Judicial Council to determine whether to issue an order to show cause why Complainant should not be enjoined from

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

filing further complaints under the Judicial Conduct and Disability Act.

s/ D. Brooks Smith
Chief Judge

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ORDER

(Filed: September 15, 2020)

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: September 15, 2020