

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. Nos. 03-20-90045 and 03-20-90077

IN RE: COMPLAINT OF JUDICIAL MISCONDUCT
OR DISABILITY

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

MEMORANDUM OPINION

(Filed: December 8, 2020)

PRESENT: SMITH, *Chief Judge*.

The present complaints are 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 complaints 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

¹ In a letter submitted with the complaint filed in J.C. No. 03-20-90077, Complainant complains about individuals who are not covered under the Judicial Conduct and Disability Act; e.g., his former attorney and employees in the Circuit Executive’s Office. 28 U.S.C. § 352(b)(1)(A)(i); Rule 1, *Rules for Judicial-Conduct and Judicial-Disability Proceedings*. These allegations cannot be addressed in the present proceedings. In any event, it is noted that, to the extent Complainant is complaining about the processing and docketing of his petition for review in J.C. No. 03-20-90009, Complainant was provided with multiple extensions of time and his petition for review was docketed and transmitted to the Judicial Council. The petition for review was denied and the Judicial Council further ordered that Complainant show cause why he should not be enjoined pursuant to Rule 10 from filing additional complaints of judicial misconduct. Rule 10, *Rules for Judicial-Conduct and Judicial-Disability Proceedings*.

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 has filed multiple complaints, including another complaint against the Subject Judge, that were all dismissed as frivolous and merits-related. *See* J.C. Nos. 03-19-90018, 03-19-90058, 03-19-90077, 03-20-90009. Here, Complainant again seeks to challenge the Subject Judge’s rulings. Complainant alleges that the Subject Judge did not give him a “yes or no” answer about an issue and was not honest about why Complainant would not be compensated for his travel to a hearing. Complainant also appears to dispute that his former attorney provided him with his entire case file as directed by the court. In addition, Complainant alleges that the Subject Judge ruled in favor of defendants in Complainant’s civil suit “in a malicious conduct act and is aware of [his] disability conditions.” Complainant further contends that the Subject Judge should not have allowed Complainant’s attorney to represent him in his civil suit because the attorney specialized in bankruptcy. Finally, Complainant argues that the Subject Judge should have sanctioned Complainant’s former attorney.

Allegations disputing the merits of judicial rulings do not 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. Merits-related allegations are not cognizable as misconduct because 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). Thus, all such 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*.

To the extent that Complainant’s allegations are not based solely on his disagreement with the merits of the Subject Judge’s rulings, they are unsubstantiated. The record reveals no evidence to support Complainant’s allegations of bias and malice. Complainant’s remaining allegations are therefore 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 under 28 U.S.C.

§ 352(b)(1)(A)(i), (ii), and (iii).²

s/ D. Brooks Smith

Chief Judge

² As noted above, injunction proceedings pursuant to Rule 10(a) are pending in J.C. No. 03-20-90009. Those injunction proceedings do not affect Complainant's ability to file a petition for review in the present matter. Rule 10(a), *Rules for Judicial-Conduct and Judicial-Disability Proceedings*.

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ORDER

(Filed: December 8, 2020)

PRESENT: SMITH, *Chief Judge*.

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:

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: December 8, 2020