

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. No. 03-20-90079

IN RE: COMPLAINT OF JUDICIAL MISCONDUCT
OR DISABILITY

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

MEMORANDUM OPINION

(Filed: April 22, 2021)

PRESENT: AMBRO, *Circuit Judge*.¹

The present complaint is filed under the Judicial Conduct and Disability Act, 28 U.S.C. §§ 351-64, against a United States District Judge (“Subject Judge”). 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 of the *Rules for Judicial-Conduct and Judicial-Disability Proceedings*.

² Complainant has filed multiple 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, 03-20-90035, 03-20-90045, 03-20-90046, 03-20-90047. Five of the complaints (J.C. Nos. 03-18-90030, 03-18-90163, 03-20-90035, 03-20-90046, and 03-20-90047) named the Subject Judge.

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, an incarcerated three-striker, has filed multiple civil actions.³

Complainant has asserted imminent danger and alleges that the Subject Judge has made errors in his habeas proceedings and seeks to keep him incarcerated illegally.

Complainant further alleges that the Subject Judge has abused his discretion, does not follow prevailing law, and tries to moot recusal and other “prejudicial motions.”

It is apparent that Complainant’s allegations reflect his disagreement with the merits of the Subject Judges’ 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

³ Complainant also makes allegations concerning another judge who is not named as a Subject Judge. Complainant complains about this judge’s dismissal of Complainant’s prior complaints of judicial misconduct. I decline to identify a complaint based on Complainant’s frivolous and merits-related allegations. Rule 5, *Rules for Judicial-Conduct and Judicial-Disability Proceedings*.

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*.

Complainant also complains about the Subject Judge's delay. These allegations are subject to dismissal 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*. In the present complaint, Complainant again fails to provide any evidence of habitual delay or improper motive for any putative delay and 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.

Finally, a review of the records in Complainant's underlying civil matters reveals no basis for Complainant's other allegations, including his allegations of bias, impartiality, antagonism, and retaliation.⁴ 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*.

⁴ Notably, the Judicial Council recently issued an order enjoining Complainant from filing additional complaints of judicial misconduct in accordance with Rule 10 of the *Rules for Judicial-Conduct and Judicial-Disability Proceedings* in view of his abuse of the complaint procedure. Complainant was permitted to file the present complaint because injunction proceedings were still pending at the time the complaint was received.

s/ Thomas L. Ambro
Circuit Judge

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ORDER

(Filed: April 22, 2021)

PRESENT: AMBRO, *Circuit 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)(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.

Thomas L. Ambro
Circuit Judge

Dated: April 22, 2021