

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. No. 03-21-90008

IN RE: COMPLAINT OF JUDICIAL MISCONDUCT
OR DISABILITY

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

MEMORANDUM OPINION

(Filed: May 11, 2021)

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 Circuit Judge (the “Subject Judge”). 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).

As a preliminary matter, I note that Complainant sent many different documents via email and facsimile naming various judges directly to multiple chambers and court staff members. As Complainant was advised, however, complaints of judicial misconduct must

be filed in hard copy with the Circuit Executive's Office. Only one complaint was received in hard copy by the Circuit Executive's Office and this complaint was docketed in accordance with Rule 6 of the *Rules for Judicial-Conduct and Judicial-Disability Proceedings*. This complaint named the Subject Judge and is addressed here.¹

It is apparent that Complainant's allegations reflect dissatisfaction with the merits of judicial decisions and rulings. Specifically, Complainant disagrees with rulings made by a District Judge during a civil suit. Complainant also disagrees with the denial of one of her appeals stemming from this civil suit and disputes appellees' characterization of a second appeal as interlocutory.² In addition, Complainant complains that rehearing en

¹ Included among the documents discussed above was an email attaching complaint forms and documents naming all of the active Third Circuit judges and one Senior Circuit Judge. These documents have been reviewed, even though they were not filed in the proper manner. They repeat the same allegations as J.C. No. 03-21-90008. Complainant also names a District Judge in the complaint and various unsworn supplements. As no complaint has been formally filed against me under Rule 6, I am not a Subject Judge and I decline to disqualify myself from consideration of the present proceedings. Rule 25(b) of the *Rules for Judicial-Conduct and Judicial-Disability Proceedings* ("A subject judge, including a chief judge, is disqualified from considering a complaint except to the extent that these Rules provide for participation by a subject judge."). In any event, I conclude that the "rule of necessity" permits my consideration of the present matter. *See* Commentary on Rule 25 ("There is no unfairness in permitting the chief judge to dispose of a patently insubstantial complaint that names all active circuit judges in the circuit.").

I have considered all of Complainant's allegations pursuant to Rule 5 of the *Rules for Judicial-Conduct and Judicial-Disability Proceedings* and decline to identify a complaint based on Complainant's frivolous and merits-related allegations. Complainant's allegations do not warrant requesting a transfer to another Judicial Council under Rule 26.

² A motion to dismiss one of Complainant's appeals on this ground remains pending.

banc was denied.³ 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*.⁴

To the extent Complainant’s allegations are not merits-related, they are baseless. A review of the record reveals no evidence for the existence of bad faith, racial bias, partiality, or any judicial misconduct. Nor is there any evidence of ex parte communications or improper research outside of the scope of the record. Thus, Complainant’s remaining allegations are subject to dismissal as frivolous and unsupported

³ The decision to deny rehearing en banc appears to be the only decision that the Subject Judge participated in concerning Complainant.

⁴ Complainant’s allegations concerning individuals who are not federal judges, such as attorneys and a clerk, will not be addressed in these proceedings because only federal judges are 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*.

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). In view of the repetitive, frivolous, and merits-related nature of Complainant's allegations, Complainant is cautioned pursuant to Rule 10 of the *Rules for Judicial-Conduct and Judicial-Disability Proceedings*.⁵

s/ D. Brooks Smith
Chief Judge

⁵ Rule 10(a) of the *Rules for Judicial-Conduct and Judicial-Disability Proceedings* provides:

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.

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. No. 03-21-90008

IN RE: COMPLAINT OF JUDICIAL MISCONDUCT
OR DISABILITY

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

ORDER

(Filed: May 11, 2021)

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 11, 2021