

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. Nos. 03-22-90021, 03-22-90024, 03-22-90028, 03-22-90040

IN RE: COMPLAINT OF JUDICIAL MISCONDUCT
OR DISABILITY

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

MEMORANDUM OPINION

(Filed: August 16, 2022)

PRESENT: McKEE, Circuit Judge.¹

These complaints are 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 Circuit Judge (“Subject Judge III”).² For the reasons discussed below, the complaints 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

¹ Acting pursuant to Rule 25(f) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings.

² Complainant has filed two of the present complaints against Subject Judge I. Complainant has also filed the following complaints that have all been dismissed as frivolous and merits-related: J.C. Nos. 03-20-90084, 03-21-90066, 03-21-90067, 03-21-90068, 03-21-90069, 03-21-90079, 03-21-90080, 03-21-90081, 03-21-90082, and 03-22-90003. Five of the foregoing complaints named Subject Judge I.

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, a frequent pro se litigant, was a plaintiff in a civil rights action assigned to the Subject Judge I. Subject Judge I dismissed the complaint for failure to state a claim but, on appeal, the Court of Appeals vacated the judgment and remanded it to the District Court. The matter was reopened and the Subject Judge issued an order permitting one of Complainant's claims to proceed and dismissing the remainder. Subject Judge I thereafter issued a memorandum opinion and order granting summary judgment in favor of the defendant and against Complainant.

In J.C. No. 03-22-90021, Complainant recounts the basis for his civil rights action and again alleges that Subject Judge I is part of a conspiracy against him and engaged in illegal activities. In J.C. Nos. 03-22-90028 and 03-22-90040, Complainant complains about Subject Judge II's putative failure to act in a separate suit where Complainant seeks to initiate a criminal action. He also complains about Subject Judge II's granting of an extension of time to a party. In J.C. No. 03-22-90024, Complainant complains about Subject Judge III's dismissal of Complainant's prior complaints of judicial misconduct against Subject Judge I and contends that Subject Judge III is biased against him.³

³ Complainant also makes various allegations against individuals who are not federal judges, including attorneys and parties in his civil suits. These allegations are not cognizable under the Judicial Conduct and Disability Act and cannot be addressed here. See 28 U.S.C. § 352(b)(1)(A)(i); see also Rule 1, Rules for Judicial-Conduct and Judicial-Disability Proceedings.

To the extent Complainant’s allegations reflect his disagreement with the Subject Judges’ rulings in Complainant’s civil rights actions and prior judicial misconduct proceedings, the allegations are merits related. Merits-related allegations do not constitute cognizable misconduct. Rule 4(b)(1), Rules for Judicial-Conduct and Judicial-Disability Proceedings (“Cognizable misconduct does not include an allegation that calls into question the correctness of a judge’s ruling, including a failure to recuse.”); see also Commentary on Rule 4 (“The phrase ‘decision or procedural ruling’ is not limited to rulings issued in deciding Article III cases . . . a complaint challenging the correctness of a chief judge’s determination to dismiss a prior misconduct complaint would be properly dismissed as merits-related . . .”). Such 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’s non-merits-related allegations, including his allegations of bias, criminal behavior, and conspiracy, are baseless. The record does not reveal any basis whatsoever to support a conclusion that the Subject Judges have engaged in judicial misconduct of any kind. Such 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.

As noted above, Complainant previously filed multiple misconduct complaints naming nine different Subject Judges, including five complaints against Subject Judge I.

See J.C. Nos. 03-20-90084, 03-21-90066–69, 03-21-90079–82, 03-22-90003.

Complainant was twice cautioned pursuant to Rule 10 of the Rules for Judicial-Conduct and Judicial-Disability Proceedings that continued filing of repetitive, harassing, or frivolous complaints may result in the imposition of restrictions pursuant to this provision.⁴ Nonetheless, Complainant proceeded to file four additional complaints. Accordingly, a copy of this opinion will be transmitted to the Judicial Council for consideration of the issuance of an order to show cause why Complainant should not be restricted from filing further complaints pursuant to Rule 10(a).

Based on the foregoing, the complaints will be dismissed pursuant to 28 U.S.C. § 352(b)(1)(A)(i), (ii), and (iii).

s/ Theodore A. McKee
Circuit Judge

⁴ 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.

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ORDER

(Filed: August 16, 2022)

PRESENT: McKEE, Circuit Judge.¹

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 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.

¹ Acting pursuant to Rule 25(f) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings.

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/ Theodore A. McKee
Circuit Judge

Dated: August 16, 2022