

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. Nos. 03-22-90005, 03-22-90007, 03-22-90008,
03-22-90009, 03-22-90010

IN RE: COMPLAINT OF JUDICIAL MISCONDUCT
OR DISABILITY

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

MEMORANDUM OPINION

(Filed: April 19, 2022)

PRESENT: McKEE, Circuit Judge.¹

These two complaints are filed under the Judicial Conduct and Disability Act, 28 U.S.C. §§ 351-64, against five United States Circuit Judges (“Subject Judge I” through “Subject Judge V”). 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 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 Acting as Chief Judge pursuant to Rule 25(f), Rules for Judicial-Conduct and Judicial-Disability Proceedings (assigning the Chief Judge’s duties to the “most-senior active circuit judge not disqualified”).

The first of these complaints concerns Subject Judge I's disposition of a prior misconduct complaint that Complainant filed against two other Circuit Judges. Complainant alleges that Subject Judge I's opinion dismissing the prior complaint is biased, contains false statements, and reflects hostility toward Complainant. Complainant further alleges that Subject Judge I is involved in a conspiracy aimed at "suppression and cover-up of subpoena evidence in civil, appellate, and now administrative proceedings," and he accuses Subject Judge I of abuse of process, retaliation, intellectual dishonesty, and racial discrimination. Finally, based upon his belief that all Circuit Judges are involved in the purported conspiracy, Complainant requests that his complaint be transferred to the Judicial Council of another Circuit.

The second complaint of judicial misconduct concerns rulings rendered several years ago by Subject Judges II through V in the course of two of Complainant's appeals. Complainant alleges that the Subject Judges' rulings constitute interference with Complainant's right of access to the courts, abuse or harassing behavior, violation of their oaths of office, and use of the judicial office to obtain special treatment for others. Again alleging that all judges Circuit Judges are participating in a conspiracy against him, Complainant seeks a transfer of this complaint to the Judicial Council of another Circuit.

It is apparent that Complainant's allegations in both complaints are primarily intended to collaterally challenge the merits of decisions rendered by the five Subject Judges. Such allegations are merits-related and therefore do not constitute cognizable

misconduct.² 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.”). Complainant’s merits-related allegations are therefore 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 Complainant’s allegations are not merits-related, they are unsubstantiated. A review of the record in the relevant proceedings as well as the voluminous materials Complainant submitted to support his claims does not reveal evidence of judicial misconduct on the part of any Subject Judge. 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.

Finally, Complainant’s repeated requests seeking to transfer these misconduct proceedings to the Judicial Council of another Circuit pursuant to Rule 26, Rules for Judicial-Conduct and Judicial-Disability Proceedings (“In exceptional circumstances, a chief judge or a judicial council may ask the Chief Justice to transfer a proceeding . . . to the judicial council of another circuit.”) have been considered. Inasmuch as both

² A complaint challenging the correctness of a determination to dismiss a prior misconduct complaint is merits-related. See Commentary on Rule 4, Rules for Judicial-Conduct and Judicial-Disability Proceedings.

complaints are merits-related, frivolous, and lacking in substantial evidence of misconduct, exceptional circumstances do not exist to warrant transfer to another Circuit. Accordingly, Complainant's requests for a transfer are denied.

Based on the foregoing, the instant complaints will be dismissed pursuant to 28 U.S.C. § 352(b)(1)(A)(ii) and (iii). It is noted that, after these two complaints were filed, the Judicial Council initiated proceedings pursuant to Rule 10 of the Rules for Judicial-Conduct and Judicial-Disability Proceedings³ to consider imposing filing restrictions on Complainant in light of his extensive abuse of the misconduct complaint procedures. See J.C. No. 03-21-90070. On March 18, 2022, the Judicial Council issued an order to show cause why Complainant should not be enjoined. That order provides that no new complaints of judicial misconduct will be accepted for filing while the issue of whether to impose an injunction is under consideration. Because the two instant complaints pre-date the Judicial Council's show cause order, the complaints were accepted for filing and have been considered on their merits. Complainant is reminded, however, that the Judicial Council's order remains in effect and that additional complaints will not be accepted.

³ 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.

s/ Theodore A. McKee

Circuit Judge

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ORDER

(Filed: April 19, 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 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.

¹ Acting as Chief Judge pursuant to Rule 25(f), Rules for Judicial-Conduct and Judicial-Disability Proceedings (assigning the Chief Judge’s duties to the “most-senior active circuit judge not disqualified”).

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/ Theodore A. McKee

Chief Judge

Dated: April 19, 2022