

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. Nos. 03-22-90103, 03-22-90104, 03-22-90105, 03-22-90106, 03-22-90107, 03-22-90108, 03-22-90109, 03-22-90110, 03-22-90111

IN RE: COMPLAINT OF JUDICIAL MISCONDUCT
OR DISABILITY

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

MEMORANDUM OPINION

(Filed: January 27, 2023)

PRESENT: KRAUSE, Circuit Judge.¹

This complaint is filed under the Judicial Conduct and Disability Act, 28 U.S.C. §§ 351-64, against four Circuit Judges and five District Judges (Subject Judges I through IX). 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). Pursuant to Rule 25(f), if the Chief Judge is disqualified from performing the duties that the Act and these

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

Rules assign to a Chief Judge, those duties “must be assigned to the most-senior active circuit judge not disqualified.” Rule 25(f), Rules for Judicial-Conduct and Judicial-Disability Proceedings.

Complainant filed a previous complaint alleging that he should have been granted a certificate of appealability and should not have been denied a stay, among other claims. See J.C. Nos. 03-22-90035 through 03-22-90039. Complainant further alleged that a prior complaint of judicial misconduct (J.C. No. 03-21-90075) should not have been dismissed. In the present complaint, Complainant complains about the Subject Judges’ denial of a petition for review. See J.C. Nos. 03-22-90035 through 03-22-90039. Complainant also seeks to incorporate by reference his prior allegations.

It is evident that Complainant seeks to collaterally attack the denial of a prior petition for review and other decisions by the Subject Judges. However, 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.

To the extent Complainant alleges that the Subject Judges are biased against him, his complaint is subject to dismissal because, other than his disagreement with the Subject Judges' rulings, Complainant provides no support for his allegations. 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.

Complainant was cautioned previously 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.² See J.C. Nos. 03-22-90035 through 03-22-90039. Nonetheless, Complainant proceeded to file the present complaint naming nine judges and repeating prior merits-related allegations. 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).

² 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.

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

s/ Cheryl A. Krause
Circuit Judge

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ORDER

(Filed: January 27, 2023)

PRESENT: KRAUSE, Circuit Judge¹

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 pursuant to Rule 25(f), Rules for Judicial-Conduct and Judicial-Disability Proceedings.

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/ Cheryl A. Krause
Circuit Judge

Dated: January 27, 2023