

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. No. 03-18-90003

IN RE: COMPLAINT OF JUDICIAL MISCONDUCT
OR DISABILITY

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

MEMORANDUM OPINION

(Filed: March 13, 2018)

PRESENT: SMITH, *Chief Judge*.

This is a complaint filed under the Judicial Conduct and Disability Act, 28 U.S.C. §§ 351-64, against a United States District 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).

This complaint vaguely refers to two proceedings before the Subject Judge. One is a sealed grand jury matter. In the second, Complainant filed a pro se civil rights

complaint but did not pay the filing fee or move to proceed *in forma pauperis*. The Subject Judge therefore dismissed the complaint for failure to prosecute. Complainant moved to vacate the dismissal order, and the Subject Judge denied the motion. Although Complainant did not appeal, he filed a related petition for a writ of mandamus in the Court of Appeals. The petition also was dismissed for failure to prosecute.

This complaint of judicial misconduct is comprised of nothing more than a list of disconnected, conclusory phrases. While far from clear, it appears that some phrases might pertain to the merits of the Subject Judge's decisions and rulings, such as "lack jurisdiction," "void," "fundamental privacy right," "crime victim rights," and "violation civil rights." Other phrases appear to be accusations of criminal activity and other wrongdoing on the part of the Subject Judge, such as "biased," "crimes: obstruction of justice," "concealing truth," and "impeding justice." While some of the phrases include citations to statutes and case law, they are all extremely vague and lack both meaningful explanation and any evidentiary support.

To the extent any allegations are intended to challenge the merits of any decisions or rulings by the Subject Judge, they do not constitute cognizable misconduct under the Judicial Conduct and Disability Act. *See* 28 U.S.C. § 352(b)(1)(A)(ii); Rules 3(h)(3)(A), 11(c)(1)(B), *Rules for Judicial-Conduct and Judicial-Disability Proceedings*. Accordingly, all merits-related allegations are subject to dismissal.

All remaining allegations are entirely unsubstantiated. A review of the public record does not lend support to any claim that judicial misconduct has occurred. This complaint is 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*.

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

s/ D. Brooks Smith
Chief Judge

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ORDER

(Filed: March 13, 2018)

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)(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: March 13, 2018