

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. Nos. 03-16-90074; 03-16-90075

IN RE: COMPLAINT OF JUDICIAL MISCONDUCT
OR DISABILITY

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

MEMORANDUM OPINION

(Filed: February 22, 2017)

PRESENT: SMITH, *Chief Judge*.

This is a complaint 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”). 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).

Complainants are a group of several family members. In 2009, one of the Complainants filed a civil action that was assigned to Subject Judge I. Subject Judge I dismissed the complaint for lack of subject matter jurisdiction. Complainant appealed,

and the Court of Appeals affirmed Subject Judge I's judgment. In 2015, Complainants filed a civil action, which initially was assigned to Subject Judge I. Subject Judge I *sua sponte* recused from the matter and it was reassigned to Subject Judge II. Recently, Subject Judge II dismissed the complaint for lack of subject matter jurisdiction and related reasons.

In this difficult-to-interpret complaint of judicial misconduct, Complainants allege that members of their family have been denied constitutional and statutory rights and have been deprived "of rights under the color of the law." They argue that Subject Judges I and II have engaged in discrimination against disabled persons and are "holding . . . in bondage" the matriarch of their family. The complaint also refers to several serious violent crimes including murder and rape, but does not explain how these crimes relate to the allegations of judicial misconduct. Complainants have included exhibits to the complaint, which include state and federal court documents, a property purchase agreement, correspondence, military paperwork, and photographs of deceased family members.

To the extent the allegations of the complaint are intended to dispute the orders by Subject Judges I and II dismissing Complainants' civil actions, such allegations are merits-related. "An allegation that calls into question the correctness of a judge's ruling, . . . without more, is merits-related." Rule 3(h)(3)(A), *Rules for Judicial-Conduct and Judicial-Disability Proceedings*. Merits-related allegations are subject to dismissal because 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*.

The remaining allegations of the complaint are unexplained, unsupported, and do not appear to pertain to actions by the Subject Judges. The records in the two civil actions provide nothing to substantiate a claim of judicial misconduct. Accordingly, all remaining allegations will be dismissed 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, the 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: February 22, 2017)

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: February 22, 2017