

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. Nos. 03-17-90041, 03-17-90042

IN RE: COMPLAINT OF JUDICIAL MISCONDUCT
OR DISABILITY

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

MEMORANDUM OPINION

(Filed: August 9, 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 (hereinafter “Subject Judge I” and “Subject Judge II”). For the reasons discussed below, the complaint will be dismissed.¹

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). The “misconduct

¹ Complainant previously filed an unsuccessful complaint of judicial misconduct against Subject Judge I which was dismissed as frivolous and merits-related.

procedure [under the Act] is not designed as a substitute for, or supplement to, appeals or motions for reconsideration. Nor is it designed to provide an avenue for collateral attacks or other challenges to judges' rulings." *In re Memorandum of Decision of Judicial Conference Committee on Judicial Conduct and Disability*, 517 F.3d 558, 561 (U.S. Jud. Conf. 2008).

Complainant was a plaintiff in a civil action assigned to Subject Judge I. Complainant complains that Subject Judge I dismissed her civil action, denied her recusal motion, and did not give her a jury trial. Complainant contends that Subject Judge I should have recused himself because he was named as a defendant in another civil action that she filed. Complainant further alleges that Subject Judge I was engaged in the concealment of evidence and witnesses in a prior civil action and "unjustifiably dismissed" that case without giving her a "chance to answer it." Complainant claims, moreover, that Subject Judge I exhibited "mental instability" because he used the word "I" an "inordinate" number of times in an opinion dismissing one of her cases.

Complainant plainly seeks to collaterally attack Subject Judge I's rulings in various civil matters and thus her allegations are dismissed as merits-related. See 28 U.S.C. § 352(b)(1)(A)(ii) (chief judge may dismiss a complaint if he or she finds that it is directly related to the merits of a decision or procedural ruling); Rule 3(h)(3)(A), *Rules for Judicial-Conduct and Judicial-Disability Proceedings* ("[a]n allegation that calls into question the correctness of a judge's ruling, including a failure to recuse, without more, is

merits-related”); Rule 11(c)(1)(B), *Rules for Judicial-Conduct and Judicial-Disability Proceedings* (a complaint must be dismissed in whole or in part to the extent that the chief judge concludes that the complaint is directly related to the merits of a decision or procedural ruling).

Furthermore, Complainant provides no evidence of any judicial misconduct or the existence of a disability on the part of Subject Judge I. The use of the word “I” in an opinion is not indicative of the existence of a disability under the circumstances presented here. Complainant’s allegations are dismissed as frivolous and unsupported by any 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 further alleges that Subject Judge II ignored prevailing law, refused to recuse himself, and assisted in a cover up of the dismissal of pro se discrimination cases. Again, Complainant seeks to collaterally attack Subject Judge II’s rulings in an underlying civil matter. These allegations are subject to dismissal as merits-related. 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*. To the extent Complainant alleges that Subject Judge II had an improper motive for any of his rulings or engaged in a “cover up”, Complainant’s allegations are dismissed as frivolous and unsupported by any 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*. The record has been reviewed and there is no evidence of judicial misconduct.²

For the foregoing reasons, the complaint is dismissed pursuant to 28 U.S.C. § 352(b)(1)(A)(i), (ii), and (iii).

s/ D. Brooks Smith
Chief Judge

² Complainant makes additional statements about a Circuit Judge and a District Judge who are not formally named as Subject Judges in the complaint. I have considered Complainant's statements under Rule 5, *Rules for Judicial-Conduct and Judicial-Disability Proceedings*. Complainant's statements are merits-related and/or unsupported by any evidence. Complainant's statements do not provide "reasonable grounds for inquiry" into the existence of misconduct or a disability. Therefore, I decline to identify any complaints based upon them. See Rule 5, *Rules for Judicial-Conduct and Judicial-Disability Proceedings*.

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ORDER

(Filed: August 9, 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)(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.

Rule 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: August 9, 2017