

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. No. 03-17-90063

IN RE: COMPLAINT OF JUDICIAL MISCONDUCT
OR DISABILITY

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

MEMORANDUM OPINION

(Filed: September 12, 2017)

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).

Complainant, a state prisoner, filed a pro se civil rights complaint in 2013, claiming wrongful eviction without due process of law. After a lengthy procedural history that is

not relevant here, in 2016, the matter was assigned to the Subject Judge, who dismissed it for failure to state a claim upon which relief can be granted and permitted Complainant 45 days in which to amend the complaint. Rather than amend, Complainant filed a motion for reconsideration and a notice of appeal. Both the motion for reconsideration and the appeal remain pending.

Complainant alleges that the Subject Judge's decision is "in violation of the rules of court." Specifically, Complainant contends that the Subject Judge improperly failed to schedule a hearing on the matter. In addition, Complainant argues that the decision unfairly "restart[ed] the clock for the defendants" by permitting the defendants additional time in which to respond to the complaint. Complainant further argues that dismissal was improper because the complaint stated claims and that "the rules of court do not require more." Complainant claims that the Subject Judge abused his discretion, improperly favors the defendants, and harbors a bias against Complainant. In addition, Complainant alleges that the Subject Judge is prejudiced against her because she filed a prior complaint of judicial misconduct against a magistrate judge with whom the Subject Judge works.¹ As support for the complaint, Complainant submitted voluminous exhibits, including court documents and correspondence, to which she has added her own annotations concerning their relevance to the misconduct complaint.

¹ That complaint was dismissed as merits-related, frivolous, and unsupported. *See* J.C. No. 03-16-90073.

Much of this complaint simply reflects Complainant's disagreement with the Subject Judge's decision to dismiss the complaint. Such allegations are clearly 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 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*. Moreover, the Subject Judge's dismissal order is the subject of Complainant's pending appeal. The "misconduct 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). Accordingly, Complainant's merits-related allegations will be dismissed.

When considered independently from the merits-related allegations, it is apparent that Complainant's allegations of favoritism toward the defendants and abuse of discretion are lacking evidentiary support. In addition, Complainant offers nothing apart from personal suspicion to substantiate her claim that the Subject Judge is biased as a result of her decision to file a complaint of judicial misconduct against a colleague of the Subject Judge. It is noted that the *Rules of Judicial-Conduct and Judicial-Disability Proceedings*

provide that complaints of judicial misconduct are confidential. Rule 23(a), *Rules of Judicial-Conduct and Judicial-Disability Proceedings*. Accordingly, all 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*.

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

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. No. 03-17-90063

IN RE: COMPLAINT OF JUDICIAL MISCONDUCT
OR DISABILITY

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

ORDER

(Filed: September 12, 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: September 12, 2017