

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. No. 03-17-90067

IN RE: COMPLAINT OF JUDICIAL MISCONDUCT
OR DISABILITY

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

MEMORANDUM OPINION

(Filed: November 17, 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 filed two pro se civil proceedings related to an allegedly wrongful state court foreclosure. After a hearing, the Subject Judge dismissed the first proceeding

with prejudice. Complainant sought reconsideration and the Subject Judge's recusal; after hearings, the Subject Judge denied Complainant's motions. The Subject Judge also entered an order limiting Complainant's ability to file new pleadings without court leave. The Subject Judge dismissed the second proceeding for lack of jurisdiction. Complainant moved for reconsideration and the Subject Judge's recusal; the Subject Judge held a hearing and denied the motions. The Subject Judge granted Complainant leave in both proceedings to file a notice of appeal, although Complainant has not done so. In addition, the Subject Judge ordered that several proposed complaints be returned to Complainant without being filed.

In this complaint of judicial misconduct, Complainant alleges that the actions of the Subject Judge have resulted in an "unconstitutional deprivation of [Complainant's] right to due process." Complainant argues that his foreclosure proceedings should be consolidated and permitted to proceed in state court and that an injunction should be issued. Among the many exhibits to the complaint, Complainant provides a copy of the recusal motion that he filed in both civil proceedings, in which he argued that the Subject Judge should be recused for violating Complainant's right to due process.

Clearly, Complainant seeks to collaterally challenge the Subject Judge's decisions and rulings rendered in the course of the two civil proceedings, including the denial of Complainant's motions to recuse. 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 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 “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, all merits-related allegations will be dismissed.

To the extent Complainant presents any non-merits-related allegations, he has failed to substantiate them. For instance, he states, without explanation or elaboration, that the Subject Judge behaved in an “erratic” manner and is “holding hi[m]self up as king.” Without more, such unsupported allegations are far from sufficient to raise an inference that the Subject Judge has engaged in any form of judicial misconduct. The record reveals no basis for a conclusion that misconduct has occurred. 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*.

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: November 17, 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: November 17, 2017