

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. No. 03-17-90098

IN RE: COMPLAINT OF JUDICIAL MISCONDUCT
OR DISABILITY

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

MEMORANDUM OPINION

(Filed: February 12, 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).

Complainant, a pro se litigant, filed a civil suit claiming that an asbestos settlement trust violated his due process rights when the trust denied his claim for asbestos-related wrongful death benefits for his deceased father. The Subject Judge issued an order and

memorandum opinion granting the defendant trust's motion to dismiss, concluding the trust was a private entity and not an arm of the government. The Subject Judge also concluded that the claim was time-barred.

In this complaint of judicial misconduct, Complainant "strongly alleges" that the Subject Judge accepted a "bribe, or a gift, or other personal favors" and engaged in "improper legal discussions." Complainant further alleges that the Subject Judge's decision is a demonstration of his "egregious and hostile judicial behavior" towards Complainant because of his pro se status. Complainant also alleges that the Subject Judge was part of a conspiracy against him and his decision was a decision of "Business and Politics."

Complainant provides no evidence for these baseless claims and his allegations are entirely unsupported. Accordingly, Complainant's 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*.

To the extent Complainant seeks to attack the Subject Judge's decision dismissing his civil suit, his allegations are subject to dismissal as 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*. This administrative proceeding does not provide an opportunity to litigate a substantive challenge to the merits of the Subject Judge’s decision. Indeed, Complainant is pursuing an appeal that is pending before the Court of Appeals; his merits-related allegations can and should be raised in that 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 are subject to dismissal.

Based on the foregoing, the complaint will be dismissed pursuant to 28 U.S.C.

§§ 352(b)(1)(A)(i), (ii), and (iii).

s/ D. Brooks Smith
Chief Judge

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ORDER

(Filed: February 12, 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)(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.

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 12, 2018