

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. No. 03-17-90105

IN RE: COMPLAINT OF JUDICIAL MISCONDUCT
OR DISABILITY

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

MEMORANDUM OPINION

(Filed: March 5, 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 filed two pro se civil complaints in District Court. Both matters related to an allegedly wrongful state court foreclosure, and both were assigned to the

Subject Judge. 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, and later entered an order limiting Complainant's ability to file new pleadings without leave. The Subject Judge dismissed the second proceeding for lack of jurisdiction. Complainant moved for reconsideration and the Subject Judge's recusal in that matter as well; the Subject Judge held a hearing and denied the motions. Although Subject Judge granted Complainant leave in both proceedings to file a notice of appeal, Complainant never appealed.

In this complaint, Complainant alleges that a state court judge and a state court administrator violated his rights in the state court foreclosure proceeding.¹ Complainant alleges that the Subject Judge "was privy to all of the documents" concerning the state court foreclosure, and therefore accuses the Subject Judge of misprision of treason under 18 U.S.C. § 2382.

Complainant provides no evidence whatsoever that the Subject Judge has committed a criminal act or, indeed, that any form of judicial misconduct has occurred. These allegations are therefore subject to dismissal as frivolous and unsupported by evidence that would raise an inference that misconduct has occurred. 28 U.S.C.

¹ To the extent Complainant alleges wrongdoing on the part of individuals who are not federal judges, such individuals are not subject to the Judicial Conduct and Disability Act. *See* 28 U.S.C. §§ 351, 352(b)(1)(A)(i); Rule 4, *Rules for Judicial-Conduct and Judicial-Disability Proceedings*. Such allegations are therefore beyond the scope of this proceeding and will not be addressed in this opinion.

§ 352(b)(1)(A)(iii); Rule 11(c)(1)(C), (D), *Rules for Judicial-Conduct and Judicial-Disability Proceedings*.

Moreover, it appears that Complainant’s allegations are premised upon decisions and rulings rendered by the Subject Judge in the course of Complainant’s two civil proceedings. As such, the 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 and are therefore subject to dismissal. *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*.

Based on the foregoing, this complaint will be dismissed pursuant to 28 U.S.C. §§ 352(b)(1)(A)(i), (ii), and (iii). This is Complainant’s second complaint of judicial misconduct naming the Subject Judge and presenting allegations concerning these two civil proceedings. *See* J.C. No. 03-17-90067. The earlier complaint was dismissed as merits-related, frivolous, and unsupported by evidence of misconduct pursuant to 28 U.S.C. § 352(b)(1)(A)(iii) and Rule 11(c)(1)(B)–(D), *Rules for Judicial-Conduct and Judicial-Disability Proceedings*. Complainant’s attention is therefore directed to Rule 10(a), *Rules for Judicial-Conduct and Judicial-Disability Proceedings*.² Future abuse of

² Rule 10(a) of the *Rules for Judicial-Conduct and Judicial-Disability Proceedings* provides:

the judicial misconduct complaint procedure may result in the imposition of restrictions under this provision.

s/ D. Brooks Smith
Chief Judge

Abusive Complaints. A complainant who has filed repetitive, harassing, or frivolous complaints, or has otherwise abused the complaint procedure, may be restricted from filing further complaints. After giving the complainant an opportunity to show cause in writing why his or her right to file further complaints should not be limited, the judicial council may prohibit, restrict, or impose conditions on the complainant's use of the complaint procedure. Upon written request of the complainant, the judicial council may revise or withdraw any prohibition, restriction, or condition previously imposed.

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ORDER

(Filed: March 5, 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: March 5, 2018