

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. No. 03-18-90013

IN RE: COMPLAINT OF JUDICIAL MISCONDUCT
OR DISABILITY

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

MEMORANDUM OPINION

(Filed: March 27, 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 four pro se civil rights actions that were assigned to the Subject Judge. In the first two matters, Complainant sought entry of a default judgment, but the

Subject Judge declined to enter a default judgment because Complainant failed to properly obtain a clerk's default and effect service. Complainant also moved for the Subject Judge's recusal, but the Subject Judge declined to recuse. Both of those matters remain pending and recently were reassigned to a new district judge. In the third civil action, the defendants moved to dismiss the complaint as time-barred. The Subject Judge granted the motion to dismiss. Complainant sought reconsideration, which the Subject Judge also denied. Complainant appealed, and the appeal remains pending. Finally, in the third civil action, the defendants moved to dismiss the complaint. Those motions remain pending, and the matter has been reassigned to a new district judge.

In this complaint of judicial misconduct, Complainant alleges that the Subject Judge deprived him of his constitutional rights and violated the Federal Rules of Civil Procedure by declining to enter a default judgment in his favor.¹ Complainant further alleges that the Subject Judge demonstrated bias against him by "go[ing] out of his way to act as counsel for defaulting parties" and otherwise favoring the defendants over Complainant. Complainant states that the Subject Judge "is discriminating against me for some unknown reason and denying me of the same rights those with counsel are accorded." Complainant appends a copy of a civil complaint naming the Subject Judge

¹ Although Complainant also presents allegations of wrongdoing on the part of "3 named clerks," such individuals are not federal judges and therefore 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*. Allegations against non-covered individuals are beyond the scope of this proceeding and will not be addressed in this opinion.

and others, which presents many of these same allegations and which he contends he was prevented from filing. The record reflects, however, that the civil complaint was filed and is currently pending before another district judge.

It is apparent that Complainant believes that he should have been awarded a default judgment in his civil proceedings, and that the Subject Judge's decision not to enter a default judgment is error. These allegations are plainly 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*. Indeed, Complainant has raised many of the same allegations in the civil complaint that he recently filed, which is pending before a different district judge. 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.

Complainant's allegations of bias and discrimination are premised entirely upon his disagreement with the merits of the Subject Judge's decisions and rulings. When

considered separately from the merits-related allegations, it is clear that the claims are entirely unsubstantiated. A careful review of the record reveals no instance of the Subject Judge “acting as counsel” for the defendants or otherwise demonstrating any bias against Complainant. 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)(i), (ii), and (iii).

s/ D. Brooks Smith
Chief Judge

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ORDER

(Filed: March 27, 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 27, 2018