

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. No. 03-18-90015

IN RE: COMPLAINT OF JUDICIAL MISCONDUCT
OR DISABILITY

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

MEMORANDUM OPINION

(Filed: March 26, 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 is a defendant in a criminal proceeding before the Subject Judge. Complainant initially retained counsel but, after his relations with retained counsel deteriorated, the court appointed counsel under the Criminal Justice Act. Despite the fact

that Complainant is represented by court-appointed counsel, Complainant has filed numerous pro se motions and petitions, including motions to recuse the Subject Judge, petitions for habeas corpus relief, motions seeking the return of property, and others. The Subject Judge has denied Complainant's pro se submissions without prejudice on grounds that counsel must file such requests. Complainant also has indicated that he wishes to represent himself pro se, but the Subject Judge has deferred ruling on that request. Instead, because Complainant has demonstrated disruptive, combative, and other unusual and inappropriate behavior, the Subject Judge has directed that Complainant be examined to determine his competence to stand trial and to represent himself. The competency evaluation has not yet taken place, and the criminal proceeding remains ongoing.

In this complaint of judicial misconduct, Complainant takes issue with many of the Subject Judge's decisions and rulings, including the denial of Complainant's pro se motion seeking the return of property, the decision to appoint counsel, the denial without prejudice of Complainant's motion seeking to represent himself pro se, and the decision to order a competency evaluation. These allegations are all clearly merits-related. "An allegation that calls into question the correctness of a judge's ruling, including a failure to recuse, 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*. Accordingly, these allegations are subject to dismissal.

It does not appear that Complainant has presented any non-merits-related allegations. A careful review of the record does not reveal any grounds for concluding that misconduct has occurred. Accordingly, to the extent any allegations remain, they are subject to dismissal as unsupported by evidence that would raise an inference that misconduct has occurred. *See* 28 U.S.C. § 352(b)(1)(A)(iii); Rule 11(c)(1)(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: March 26, 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)(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 26, 2018