

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. Nos. 03-18-90051, 03-18-90052, 03-18-90053

IN RE: COMPLAINTS OF JUDICIAL MISCONDUCT
OR DISABILITY

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

MEMORANDUM OPINION

(Filed: May 21, 2018)

PRESENT: SMITH, *Chief Judge*.

This complaint was filed under the Judicial Conduct and Disability Act, 28 U.S.C. §§ 351-64, against three United States Circuit Judges (“Subject Judge I,” “Subject Judge II,” and “Subject Judge III”). For the reasons discussed below, the complaint will be dismissed.¹

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

¹ Complainant previously filed two prior complaints of judicial misconduct against a District Judge which were dismissed as frivolous and merits-related. J.C. Nos. 03-15-90061 and 03-16-90013.

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).

In the present complaint of judicial misconduct, Complainant alleges that the Subject Judges “willfully” disregarded the proper application of the Erie Doctrine in her case. In support of her claim, Complainant discusses other cases where the Subject Judges have invoked the Erie Doctrine. Complainant seeks to collaterally attack the Subject Judges’ decision affirming the District Court’s order. These allegations are all clearly 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*. In any event, Complainant filed a petition for rehearing en banc and panel rehearing which was denied. Accordingly, these allegations are subject to dismissal.²

Furthermore, the record has been reviewed and there is no evidence of judicial misconduct. Complainant’s allegations are subject to dismissal as frivolous and unsupported by any evidence that would raise an inference that misconduct has occurred.

² Complainant filed an unsworn supplement to her complaint which has been reviewed in accordance with Rule 5. Complainant’s supplement raises additional merits-related allegations and does not set forth reasonable grounds for inquiry into whether misconduct occurred. Rule 5, *Rules for Judicial-Conduct and Judicial-Disability Proceedings*.

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: May 21, 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: May 21, 2018