

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. No. 03-18-90099

IN RE: COMPLAINT OF JUDICIAL MISCONDUCT
OR DISABILITY

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

MEMORANDUM OPINION

(Filed: July 3, 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 suit in federal court against a state court judge and other participants in his unsuccessful state court case. Complainant’s federal lawsuit

involved the dissolution of a business venture between Complainant and another individual. The Subject Judge recently issued an opinion dismissing all of Complainant's claims against the state court judge on the grounds of absolute immunity and dismissed Complainant's other claims based on the *Rooker-Feldman* doctrine and *res judicata*, among other reasons.¹

In essence, Complainant is challenging various rulings the Subject Judge has made in the course of his civil action. For example, Complainant accuses the Subject Judge of condoning a state court judge's putative violation of a rule of professional conduct and further alleges that the Subject Judge was "made fully aware of the mail fraud action" of a state court judge and failed to "follow through" on orders. In addition, Complainant alleges that the Subject Judge's "judicial misconduct [has] affected [his] substantial right[s] to [an] employment contractual agreement and default judgment"

Complainant also appears to allege that the Subject Judge should have granted his motion for the appointment of counsel. Complainant's disagreement with the Subject Judge's rulings is 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.

¹ To the extent Complainant seeks to complain about the actions of a state court judge in the present proceedings, his allegations will not be addressed because the Judicial Conduct and Disability Act does not apply to state court judges. *See* 28 U.S.C. §§ 351, 352(b)(1)(A)(i); Rule 4, *Rules for Judicial-Conduct and Judicial-Disability Proceedings*.

§ 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. If Complainant wishes to seek review of the Subject Judge's rulings, he must file an appeal.

Apart from his disagreement with the merits of the Subject Judge's rulings, Complainant offers no support for his contention that the Subject Judge has engaged in judicial misconduct. The record has been reviewed, moreover, and there is no evidence of any judicial misconduct. Complainant's allegations will therefore also be dismissed 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, 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: July 3, 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: July 3, 2018