

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. No. 03-18-90164

IN RE: COMPLAINT OF JUDICIAL MISCONDUCT
OR DISABILITY

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

MEMORANDUM OPINION

(Filed: August 9, 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 a pro se civil rights complaint against a title company. In it, he sought compensation under the Crime Victims’ Rights Act (CVRA), 18 U.S.C. § 3771. The matter was assigned to the Subject Judge. The Subject Judge transferred the

complaint to a District Court outside of this Circuit. Shortly after the transfer, Complainant filed a notice indicating that he wished to voluntarily dismiss the complaint. Complainant also filed a petition for a writ of mandamus challenging the transfer order. A panel of the Court of Appeals denied the petition.

In this complaint of judicial misconduct and sworn supplement thereto, Complainant argues that he is entitled to millions of dollars in compensation under the CVRA. Complainant alleges that the Subject Judge transferred the complaint rather than awarding Complainant compensation due to a “desire to block access to the law as plead or obfuscate it.” Complainant surmises that the Subject Judge could have issued the transfer order due to “envy and jealousy” about the large amount of money at issue, because of “bias and lack of impartiality concerning crime victims,” or because “he is plain senile and confused.”

It is apparent that Complainant’s allegations are premised upon his disagreement with the Subject Judge’s order transferring the complaint. Accordingly, the allegations are merits-related. Rule 3(h)(3)(A), *Rules for Judicial-Conduct and Judicial-Disability Proceedings* (“An allegation that calls into question the correctness of a judge’s ruling, . . . without more, is merits-related.”). 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 presented a challenge to the transfer order in his mandamus petition to the Court of Appeals, and that petition was

denied; that ruling is not subject to collateral review in this administrative proceeding. 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, Complainant’s merits-related allegations will be dismissed.

When considered apart from the merits-related allegations, Complainant’s remaining allegations lack evidentiary support. For instance, Complainant identifies no basis for his subjective belief that the Subject Judge is biased against him specifically or against crime victims generally, that the Subject Judge is envious of Complainant, or that the Subject Judge suffers a mental impairment. A review of the record reveals no support for any claim of judicial misconduct or disability. Complainant’s remaining 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. § 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: August 9, 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: August 9, 2018