

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. Nos. 03-18-90175, 03-18-90178

IN RE: COMPLAINTS OF JUDICIAL MISCONDUCT
OR DISABILITY

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

MEMORANDUM OPINION

(Filed: October 4, 2018)

PRESENT: SMITH, *Chief Judge*.

These complaints are filed under the Judicial Conduct and Disability Act, 28 U.S.C. §§ 351-64, against a United States District Judge (“Subject Judge I”) and a United States Magistrate Judge (“Subject Judge II”). For the reasons discussed below, the complaints 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’s first complaint of judicial misconduct concerns a pro se complaint in which Complainant sued the United States for inflicting emotional distress upon him.

Subject Judge I dismissed the complaint for lack of jurisdiction and subsequently denied Complainant's motions for post-judgment relief, including Complainant's request that a different judge preside over the case. Complainant alleges that, in dismissing Complainant's complaint and declining to recuse, Subject Judge I "ignored facts and law," "did not allow the system to work," and acted in the absence of jurisdiction. Complainant argues that Subject Judge I is not entitled to absolute judicial immunity, accuses Subject Judge I of obstruction of justice, and demands that Subject Judge I resign.

Complainant's second complaint of judicial misconduct concerns a pro se civil RICO complaint that Complainant filed against various officials. In that proceeding, Complainant sought to compel service of process on the defendants. Subject Judge II denied Complainant's request. Complainant alleges that the position of Magistrate Judge has no foundation under the Constitution or legislation, and argues that, by denying the motion to compel service, Subject Judge II has "trespassed on the case." Complainant seeks Subject Judge II's resignation and demands that the RICO complaint "commence without further delay."

To the extent Complainant is challenging decisions rendered by the Subject Judges, including Subject Judge I's dismissal of the complaint and decision not to recuse, and Subject Judge II's order denying the motion to compel service, 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, including a failure to recuse, 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*. Accordingly, Complainant’s merits-related allegations will be dismissed.

Complainant’s remaining allegations are baseless. Complainant offers nothing to substantiate his allegations, including his claims that Subject Judge I engaged in obstruction of justice and that Subject Judge II “trespassed on the case.” The records in these matters offers no evidentiary support for such claims. Accordingly, Complainant’s remaining allegations are subject to dismissal as 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)(D), *Rules for Judicial-Conduct and Judicial-Disability Proceedings*.

Based on the foregoing, these complaints will be dismissed pursuant to 28 U.S.C. § 352(b)(1)(A)(ii) and (iii).

s/ D. Brooks Smith
Chief Judge

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. Nos. 03-18-90175, 03-18-90178

IN RE: COMPLAINTS OF JUDICIAL MISCONDUCT
OR DISABILITY

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

ORDER

(Filed: October 4, 2018)

PRESENT: SMITH, *Chief Judge*.

On the basis of the foregoing opinion entered on this date, it is ORDERED AND ADJUDGED that the written complaints brought pursuant to 28 U.S.C. § 351 are 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: October 4, 2018