

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. No. 03-18-90186

IN RE: COMPLAINT OF JUDICIAL MISCONDUCT
OR DISABILITY

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

MEMORANDUM OPINION

(Filed: October 4, 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 petition for a writ of mandamus naming a state court judge. The matter was assigned to the Subject Judge. A Magistrate Judge issued a report and recommendation recommending that the petition be dismissed as frivolous, for failure

to state a claim, and for lack of jurisdiction. Complainant filed objections and a motion for the Magistrate Judge's recusal. The Magistrate Judge declined to recuse. The Subject Judge adopted the report and recommendation as the opinion of the District Court and dismissed the petition with prejudice. Complainant did not appeal, but did file a "motion for objection." The Subject Judge denied Complainant's motion. Recently, Complainant filed a second "motion for objection," which remains pending.

This is Complainant's second complaint of judicial misconduct concerning this mandamus petition. In this complaint of judicial misconduct, Complainant alleges that the Subject Judge's order denying Complainant's first "motion for objection" is "incoherent, immaterial, irrelevant and untimely." Complainant alleges that the Subject Judge "has failed to legally address the motions before his court" and contends that "there must be some mental issues with [the Subject Judge]."

The allegations of this complaint reflect Complainant's disagreement with Subject Judge's decision denying the first "motion for objection" and are therefore merits-related. *See* 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."). As Complainant previously was informed, merits-related allegations do not constitute cognizable misconduct under the Judicial Conduct and Disability Act and are therefore subject to dismissal. *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 addition, Complainant’s allegation of mental disability is entirely lacking in evidentiary support, as it appears to be based on nothing more than Complainant’s dispute with the disposition of the “motion for objection.” Accordingly, this allegation is 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). Because Complainant has filed two frivolous complaints against the same Subject Judge in a period of less than six months, Complainant’s attention is directed to Rule 10(a), *Rules for Judicial-Conduct and Judicial-Disability Proceedings*.¹ Future abuse of the judicial misconduct complaint procedure may result in the imposition of restrictions under this provision.

s/ D. Brooks Smith
Chief Judge

¹ Rule 10(a) of the *Rules of Judicial-Conduct and Judicial-Disability Proceedings* provides:

Abusive Complaints. A complainant who has filed repetitive, harassing, or frivolous complaints, or has otherwise abused the complaint procedure, may be restricted from filing further complaints. After giving the complainant an opportunity to show cause in writing why his or her right to file further complaints should not be limited, the judicial council may prohibit, restrict, or impose conditions on the complainant’s use of the complaint procedure. Upon written request of the complainant, the judicial council may revise or withdraw any prohibition, restriction, or condition previously imposed.

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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 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: October 4, 2018