

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. Nos. 03-18-90187 and 03-18-90188

IN RE: COMPLAINT OF JUDICIAL MISCONDUCT
OR DISABILITY

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

MEMORANDUM OPINION

(Filed: November 8, 2018)

PRESENT: SMITH, *Chief Judge*.

This is a complaint filed under the Judicial Conduct and Disability Act, 28 U.S.C. §§ 351-64, against two United States District Judges (“Subject Judge I” and “Subject Judge II”). 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 alleges that Subject Judge I acted in a biased and prejudicial manner “by authorizing and instructing the district court employees to withhold his orders as a

ploy to interfere with [his] right to appeal” and that Subject Judge I refused to enter relevant evidence into the record. Complainant further alleges that Subject Judge I has “purposely” not rendered “conclusions of law” with respect to a motion for injunctive relief and instructed counsel for defendants to file a motion for removal. Complainant also alleges that Subject Judge I directed an attorney to “intimidate and threaten” him with prosecution for recording telephone conversations. Complainant further views Subject Judge I’s statement in an order forbidding him to record phone calls with court employees as evidence of “bias misconduct.”

With respect to Subject Judge II, Complainant alleges that he acted in a biased and prejudicial manner towards him because he has not ruled on a motion for injunctive relief. Complainant also complains that Subject Judge II failed to prevent his former employer from terminating his employment and authorized the FBI to “continue with the unlawful wiretapping and the interference of employment rights.” Complainant views Subject Judge II’s decision to grant defendant’s motion for an extension of time as evidence of prejudice against him.

In essence, Complainant seeks to challenge the correctness of the Subject Judges’ rulings in his civil 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. Accordingly, Complainant’s allegations are subject to dismissal.¹

To the extent Complainant alleges that both Subject Judges delayed ruling on his motions for injunctive relief, these allegations are likewise dismissed as merits-related. 28 U.S.C. § 352(b)(1)(A)(ii). *See also* Rules 3(h)(3)(A), 3(h)(3)(B) (cognizable misconduct does not include “an allegation about delay in rendering a decision or ruling, unless the allegation concerns an improper motive in delaying a particular decision or habitual delay in a significant number of unrelated cases”), 11(c)(1)(B), *Rules for Judicial-Conduct and Judicial-Disability Proceedings*. Furthermore, Complainants’ motions were ruled upon and relief was denied.²

To the extent Complainant alleges that the Subject Judges’ putative actions are due to an improper motive or bias, his allegations are 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*. The records for the relevant cases have been reviewed and there is no evidence of judicial misconduct on the part of either Subject Judge. Specifically, there is no evidence that Subject Judge I directed Clerk’s Office employees

¹ Notably, Complainant appealed Subject Judge I’s order denying Complainant’s Rule 4(a)(6) motion and raised some of the same arguments he seeks to raise in these separate administrative proceedings under the Judicial Conduct and Disability Act. A panel of this Court affirmed the District Court’s order.

² Complainant filed an appeal of Subject Judge II’s denial of an injunction that was dismissed for failure to timely prosecute the appeal.

not to serve Complainant with copies of his orders or that Subject Judge I ordered an attorney to “threaten” Complainant. Moreover, it is not evidence of bias that Subject Judge I advised Complainant that it is a violation of Pennsylvania law to record conversations without obtaining consent from all parties. In short, there is no evidence of judicial misconduct.

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: November 8, 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: November 8, 2018