

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. No. 03-19-90041

IN RE: COMPLAINT OF JUDICIAL MISCONDUCT
OR DISABILITY

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

MEMORANDUM OPINION

(Filed: July 22, 2019)

PRESENT: SMITH, *Chief Judge*.

This complaint is filed under the Judicial Conduct and Disability Act, 28 U.S.C. §§ 351-64, against a United States District Judge (“Subject Judge”).¹ For the reasons discussed below, the complaint will be dismissed.²

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

¹ To the extent Complainant’s allegations concern state court judges, they will not be addressed in this opinion. State court judges are not covered by the Judicial Conduct and Disability Act. *See* 28 U.S.C. §§ 351, 352(b)(1)(A)(i); Rule 4, *Rules for Judicial-Conduct and Judicial-Disability Proceedings*.

² It is noted that Complainant previously filed several complaints over twenty years ago which were dismissed as frivolous and merits-related. J.C. Nos. 97-66, 97-67, 97-68, and 99-29.

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).

In the underlying civil action, the Subject Judge ordered the remand of a state court ejectment action that Complainant sought to remove to federal court. Complainant and his co-defendant appealed. Complainant alleges that the Subject Judge is biased, prejudiced, depraved, and disabled. Complainant further claims that the Subject Judge acted with malice and is colluding with the state court judges by ordering the remand of the ejectment action. In support of this claim, Complainant has attached to his complaint a copy of a prior remand order issued by the Subject Judge in a 2011 case involving Complainant.

It is evident that Complainant seeks to collaterally attack the Subject Judge's remand order. Allegations that question the correctness of judicial rulings do not constitute cognizable misconduct under the Judicial Conduct and Disability Act. Rule 4(b)(1), *Rules for Judicial-Conduct and Judicial-Disability Proceedings* ("Cognizable misconduct does not include an allegation that calls into question the correctness of a judge's ruling, including a failure to recuse."). Complainant's merits-related allegations therefore will be dismissed. *See* 28 U.S.C. § 352(b)(1)(A)(ii); Rules 4(b)(1), 11(c)(1)(B), *Rules for Judicial-Conduct and Judicial-Disability Proceedings*.

To the extent Complainant alleges that the Subject Judge had an improper motive for his actions and conspired with state court judges, Complainant's allegations are likewise subject to dismissal. The record has been reviewed and there is no evidence of

judicial misconduct or disability. Indeed, as noted above, Complainant appealed the Subject Judge's decision and a Third Circuit panel recently affirmed the District Court's order. Accordingly, the complaint is dismissed as frivolous and unsupported by sufficient evidence to 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*.³

For the foregoing reasons, the complaint is dismissed pursuant to 28 U.S.C. §§ 352(b)(1)(A)(i), (ii), and (iii).

s/ D. Brooks Smith
Chief Judge

³ Complainant also references two Circuit judges who have not been named as Subject Judges. I have considered these allegations under Rule 5 of the *Rules for Judicial-Conduct and Judicial-Disability Proceedings* and decline to identify a complaint based on these allegations. The Circuit judges sat on the panel which denied Complainant's emergency stay motion and Complainant's allegations are merits-related.

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ORDER

(Filed: July 22, 2019)

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 22, 2019