

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. No. 03-19-90057

IN RE: COMPLAINT OF JUDICIAL MISCONDUCT
OR DISABILITY

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

MEMORANDUM OPINION

(Filed: October 18, 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 (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 directed to a state court judge. The presiding District Judge dismissed the petition as frivolous, for failure to state a claim upon which relief can be granted, and for lack of subject matter jurisdiction.

Complainant did not appeal, but filed numerous post-judgment objections and motions seeking, *inter alia*, entry of a default judgment against the state court judge. Complainant mailed one such document to the Subject Judge. The Subject Judge did not act on the document, and instead directed it to the presiding District Judge for disposition. The submission was then referred to a Magistrate Judge, who denied it as duplicative of a prior submission.

This complaint of judicial misconduct alleges that the Subject Judge has engaged in “perjurious mindless games” and states that “[p]erjury is bribery consummate.” Complainant demands “acknowledgement” and states that “[t]his matter is in default.”

Complainant does not explain the basis for his allegations of perjury. A careful review of the record reveals no evidence to support this accusation. Accordingly, the perjury allegations will be dismissed 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*.

To the extent Complainant’s allegations challenge the manner in which the Subject Judge addressed the post-judgment submission seeking entry of a default judgment, the allegations 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.”). All such non-cognizable allegations are therefore subject to dismissal. *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*.

Based on the foregoing, this complaint will be dismissed pursuant to 28 U.S.C. § 352(b)(1)(A)(ii) and (iii). Complainant previously filed three complaints of judicial misconduct that were dismissed as merits-related, unsupported, and frivolous. *See* J.C. Nos. 03-18-90060, 03-18-90186, 03-19-90045. Complainant's attention is therefore 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 pursuant to this provision.

s/ D. Brooks Smith
Chief Judge

¹ Rule 10(a) of the *Rules for 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 18, 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)(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 18, 2019