

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. No. 03-19-90066

IN RE: COMPLAINT OF JUDICIAL MISCONDUCT
OR DISABILITY

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

MEMORANDUM OPINION

(Filed: January 30, 2020)

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's allegations contest the Subject Judge's judicial rulings. Specifically, Complainant seeks to challenge the Subject Judge's refusal to recuse himself. Merits-related 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."). Accordingly, Complainant's merits-related allegations 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*.¹

To the extent Complainant's allegations of bias are not premised on his disagreement with the merits of judicial rulings, they are unsubstantiated. The record provides no support for an inference of judicial misconduct. Accordingly, Complainant's allegations of bias 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*.²

¹ Complainant also complains about District Court employees' putative inaction with respect to reassigning the civil matter to another District Judge. Only federal judges are covered by the Judicial Conduct and Disability Act. Accordingly, these allegations will not be addressed in this opinion. *See* 28 U.S.C. §§ 351, 352(b)(1)(A)(i); Rule 1, *Rules for Judicial-Conduct and Judicial-Disability Proceedings*.

² Complainant further implies that a "3rd Circuit Judicial Panel" may have also engaged in judicial misconduct. Complainant provides no support for his vague allegations and does not name the judges he complains of. Indeed, there is no record of any appeal being filed concerning the underlying civil case at issue. In any event, I have considered

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

s/ D. Brooks Smith
Chief Judge

Complainant's allegations pursuant to Rule 5 and decline to identify a complaint. Rule 5, *Rules for Judicial-Conduct and Judicial-Disability Proceedings*.

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ORDER

(Filed: January 30, 2020)

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: January 30, 2020