

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. No. 03-16-90070

IN RE: COMPLAINT OF JUDICIAL MISCONDUCT
OR DISABILITY

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

MEMORANDUM OPINION

(Filed: February 28, 2017)

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 (hereinafter “Subject Judge”).¹ For the reasons discussed below, the complaint will be dismissed.

¹ Complainant previously filed a complaint against the same Subject Judge that was dismissed as frivolous and merits-related. J.C. No. 03-16-90001. Complainant’s petition for review was denied by the Judicial Council. Although complainant does not name the former Chief Judge who dismissed his first complaint as a Subject Judge, he states that the former Chief Judge’s order J.C. No. 03-16-90001 is “unacceptable” and violates the law. Complainant further describes the Judicial Council’s affirmance of the order as “totally unacceptable.” Such allegations are plainly merits-related and not cognizable in these proceedings. Rule 3(h)(3)(A), Rules for Judicial-Conduct and Judicial-Disability; Commentary on Rule 3(h)(3)(A) (“a complaint challenging the correctness of a chief judge’s determination to dismiss a prior misconduct complaint would be properly dismissed as merits-related”).

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).

As a preliminary matter, Complainant makes allegations concerning individuals who are not subject to the Judicial Conduct and Disability Act; e.g., attorneys and defendants in his civil matter. See 28 U.S.C. §§ 351, 352(b)(1)(A)(i); Rule 4, Rules for Judicial-Conduct and Judicial-Disability Proceedings. Accordingly, these allegations will not be addressed in this opinion.

Furthermore, Complainant alleges that the Subject Judge failed to recognize that defendants in his civil suit were criminals who perpetrated “human trafficking”, “slave farming”, conspiracy, treachery, and robbery, among other things. Complainant’s sole support for these allegations, however, is his disagreement with the Subject Judge’s decisions and procedural rulings in his civil suit. Specifically, Complainant complains that the Subject Judge dismissed his complaint and that she denied him a conference, hearing, and oral argument. These allegations are merits-related and are not cognizable under the Judicial Conduct and Disability Act. See 28 U.S.C. § 352(b)(1)(A)(ii) (chief judge may dismiss a complaint if he or she finds that it is directly related to the merits of a

decision or procedural ruling); Rule 3(h)(3)(A), Rules for Judicial-Conduct and Judicial-Disability Proceedings (“[a]n allegation that calls into question the correctness of a judge’s ruling . . . without more, is merits-related”); Rule 11(c)(1)(B), Rules for Judicial-Conduct and Judicial-Disability Proceedings (a complaint must be dismissed in whole or in part to the extent that the chief judge concludes that the complaint is directly related to the merits of a decision or procedural ruling). The “misconduct procedure [under the Act] is not designed as a substitute for, or supplement to, appeals or motions for reconsideration. Nor is it designed to provide an avenue for collateral attacks or other challenges to judges’ rulings.” In re Memorandum of Decision of Judicial Conference Committee on Judicial Conduct and Disability, 517 F.3d 558, 561 (U.S. Jud. Conf. 2008).

In any event, to the extent Complainant alleges that the Subject Judge had an improper motive for her decisions, Complainant’s allegations are likewise subject to dismissal. The record has been reviewed and there is no evidence to support Complainant’s allegations of misconduct, including his baseless and unsupported allegations that the Subject Judge somehow contributed to an individual’s death. Indeed, the record reflects that Complainant’s action was dismissed because Complainant failed to make any claims falling within the District Court’s jurisdiction and Complainant “has failed to effectuate proper service in accordance with the Rules of Civil Procedure.” In the absence of any evidence for Complainant’s allegations of judicial misconduct, they are dismissed as frivolous and unsupported by any 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 seeks to again raise the same allegations that were asserted in in J.C. No. 03-16-90001 in the present proceedings, his allegations are dismissed for the same reasons discussed in the memorandum opinion issued in that case. Complainant does not provide “material information not previously considered.” Rule 11(c)(2), Rules for Judicial-Conduct and Judicial-Disability Proceedings.

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

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. No. 03-16-90070

IN RE: COMPLAINT OF JUDICIAL MISCONDUCT
OR DISABILITY

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

ORDER

(Filed: February 28, 2017)

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: February 28, 2017