

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. Nos. 03-16-90077; 03-16-90078; 03-16-90079; 03-16-90080

IN RE: COMPLAINT OF JUDICIAL MISCONDUCT
OR DISABILITY

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

MEMORANDUM OPINION

(Filed: February 27, 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 (“Subject Judge I”) and three United States Circuit Judges (“Subject Judge II,” “Subject Judge III,” and “Subject Judge IV”). 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).

Approximately twenty years ago, Complainant was involved in a bankruptcy proceeding. At that time, he alleged that his former bankruptcy counsel perpetrated a “fraud upon the court.” After conclusion of the bankruptcy, Complainant filed three complaints of judicial misconduct naming the now-retired Bankruptcy Judge, alleging that the Bankruptcy Judge perpetuated counsel’s “fraud upon the court” by declining to act in response to Complainant’s claims. *See* J.C. Nos. 99-27; 00-38; 00-48. The presiding Chief Judge, who is now deceased, dismissed those complaints.

In 2015, Complainant filed a pro se civil rights complaint against the United States, concerning the twenty-year-old bankruptcy proceeding. The matter was assigned to Subject Judge I, who dismissed the complaint for lack of subject matter jurisdiction and denied Complainant’s request for the appointment of counsel. Complainant appealed. A panel of the Court of Appeals comprised of Subject Judges II, III, and IV affirmed the judgment.

In this complaint of judicial misconduct, Complainant contends that Subject Judge I erred in declining to appoint pro bono counsel for the purpose of amending the complaint. Complainant alleges that Subject Judge I “discriminate[d]” against him because of “prior judicial misconduct alleged in this case” – specifically, the three complaints of judicial misconduct that Complainant had filed against the Bankruptcy Judge nearly two decades ago. In support of his claims, Complainant appends copies of submissions from those long-concluded judicial misconduct proceedings.

Clearly, Complainant disputes Subject Judge I's order declining the request for appointment of counsel and dismissing the complaint. Similarly, he contests the judgment of Subject Judges II, III, and IV affirming Subject Judge I's order. All such allegations are merits-related. "An allegation that calls into question the correctness of a judge's ruling, . . . without more, is merits-related." Rule 3(h)(3)(A), *Rules for Judicial-Conduct and Judicial-Disability Proceedings*. Merits-related allegations are subject to dismissal because they 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*.

Complainant does not substantiate his allegations of "fraud upon the court." His decades-old submissions from prior judicial misconduct proceedings, which do not involve any of the four Subject Judges, do not raise an inference that Subject Judges I through IV have engaged in any form of judicial misconduct. Accordingly, all remaining 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*.

Based on the foregoing, the complaint will be dismissed pursuant to 28 U.S.C. §§ 352(b)(1)(A)(ii) and (iii). Because Complainant has filed three prior complaints of judicial misconduct in the past, Complainant's attention is directed to Rule 10(a), *Rules*

*for Judicial-Conduct and Judicial-Disability Proceedings.*¹ Future abuse of the judicial misconduct complaint procedure could result in the imposition of restrictions under this provision.

s/ D. Brooks Smith
Chief Judge

¹ Rule 10(a) of the *Rules of 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: February 27, 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 27, 2017