

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. No. 03-17-90072

IN RE: COMPLAINT OF JUDICIAL MISCONDUCT
OR DISABILITY

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

MEMORANDUM OPINION

(Filed: November 17, 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 Bankruptcy Judge (the “Subject Judge”).¹ 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

¹ The complaint also names a retired Bankruptcy Judge. A complaint under the Judicial Conduct and Disability Act may be accepted for filing only if the named judge currently holds an office described in Rule 4 of the *Rules for Judicial-Conduct and Judicial-Disability Proceedings*. See Rule 8(c), *Rules for Judicial-Conduct and Judicial-Disability Proceedings*. Accordingly, as Complainant was advised by letter, the complaint was not accepted for filing as to the retired Bankruptcy Judge.

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 state court civil proceeding against a law firm. The law firm subsequently filed a petition for bankruptcy. Complainant appeared pro se as a creditor in the law firm's bankruptcy proceeding, where she presented, *inter alia*, allegations that the managing partner of the law firm had engaged in criminal activity, including the embezzlement of millions of dollars.²

In this complaint of judicial misconduct, Complainant alleges that she has “raised red flags” during the course of the bankruptcy proceeding about the “suspicious financial transactions” engaged in by the managing partner of the law firm. Complainant claims that the Subject Judge engaged in judicial misconduct by failing to report Complainant's allegations to the Department of Justice. Complainant alleges that the managing partner “is an indictable crook,” and that the Subject Judge has “stuck [her] head[] in the sand” and is therefore “guilty of misconduct/Misprision of Felony.”

Complainant presented these allegations during the bankruptcy proceeding and the Subject Judge declined to grant Complainant relief based upon them. To the extent Complainant raises the same allegations here in an effort to collaterally challenge the Subject Judge's decisions and rulings, the allegations are merits-related. “An allegation

² Complainant's allegations concern illicit behavior by a private attorney who is not a federal judge. Because private attorneys are not subject to the Judicial Conduct and Disability Act, the allegations will not be addressed in this opinion. See 28 U.S.C. §§ 351, 352(b)(1)(A)(i); Rule 4, *Rules for Judicial-Conduct and Judicial-Disability Proceedings*.

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 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*.

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). Complainant’s merits-related allegations will therefore be dismissed.

In addition, the Subject Judge does not have a duty to report to authorities Complainant’s allegations of criminal activity on the part of the law firm’s managing partner. Complainant cites no authority in support of her claim to the contrary. Indeed, Complainant is free to report her allegations to any appropriate authorities. Because there is no basis for concluding that the Subject Judge violated any duty or otherwise engaged in conduct prejudicial to the effective and expeditious administration of the business of the courts, *see* Rule 3(h)(1), *Rules for Judicial-Conduct and Judicial-Disability Proceedings*, this complaint is subject to dismissal as frivolous and unsupported by evidence sufficient

to raise an inference that misconduct 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, 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

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ORDER

(Filed: November 17, 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)(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: November 17, 2017