

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. Nos. 03-18-90004, 03-18-90005, 03-18-90006, 03-18-90007

IN RE: COMPLAINT OF JUDICIAL MISCONDUCT
OR DISABILITY

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

MEMORANDUM OPINION

(Filed: April 10, 2018)

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).

Complainants, two brothers, filed a lawsuit against the attorney hired to represent one of the brothers in a criminal matter. The lawsuit alleged that the attorney committed malpractice in the course of her representation. Subject Judge I entered summary judgment in favor of the defendant attorney and Complainants appealed. Subject Judges II, III, and IV presided over Complainants' appeal and affirmed Subject Judge I's decision.

In the present complaint of judicial misconduct, Complainants allege that all of the Subject Judges made factual and legal errors in their decisions and outline the Subject Judges' putative errors.¹ Complainants contend that the Subject Judges ignored testimony, wrongly concluded that a statement was not coerced, and denied Complainants their right to due process and a jury, among other allegations. It is clear that Complainants' allegations are intended to challenge decisions rendered by the Subject Judges, and are therefore 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 not appropriately raised in a judicial misconduct proceeding. 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

¹ Complainants also make various allegations concerning individuals who are not covered by the Judicial Conduct and Disability Act; i.e., the defendant attorney and police detectives, among others. Accordingly, these 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*.

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). Because the allegations do not constitute cognizable misconduct, they are subject to dismissal. *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*.

Complainants also contend that the Subject Judges had an improper motive for their rulings. The record has been reviewed and there is no evidence of judicial misconduct.² Accordingly, these allegations 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*.

Based on the foregoing, this complaint will be dismissed pursuant to 28 U.S.C.

² Complainants also make allegations about Subject Judge I concerning several unrelated cases. However, the appellate opinions relied upon by Complainants do not reflect that Subject Judge I engaged in judicial misconduct within the meaning of the Judicial Conduct and Disability Act. The appellate panels were critical of the Subject Judge's case-related actions and decisions, but did not indicate that Subject Judge I had engaged in judicial misconduct. Indeed, one panel commented it had "sincere respect" for Subject Judge I. Furthermore, Complainants raised some of the same allegations regarding Subject Judge I in a recusal motion that was denied by Subject Judges II, III, and IV in the course of Complainants' direct appeal. To the extent Complainants seek to collaterally attack the denial of their recusal motion, the present complaint is subject to dismissal as merits-related. Rule 3(h)(3)(A), *Rules for Judicial-Conduct and Judicial-Disability Proceedings* ("An allegation that calls into question the correctness of a judge's ruling, including a failure to recuse, without more, is merits-related.") (emphasis added).

§§ 352(b)(1)(A)(i), (ii), and (iii).

s/ D. Brooks Smith
Chief Judge

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ORDER

(Filed: April 10, 2018)

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). Complainants are 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: April 10, 2018