

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. No. 03-18-90088

IN RE: COMPLAINT OF JUDICIAL MISCONDUCT
OR DISABILITY

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

MEMORANDUM OPINION

(Filed: June 13, 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 Bankruptcy 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 was an investor in a company that filed for Chapter 11 bankruptcy. During the bankruptcy proceeding, Complainant filed pro se objections to the

reorganization plan. The Subject Judge considered and overruled Complainant's objections during a hearing, concluding that the objections reflected disagreement with a plan that had already been confirmed. Complainant did not appeal. Subsequently, pursuant to the reorganization plan, Complainant was issued stock certificates in the reorganized company. After the bankruptcy proceeding concluded, Complainant wrote several letters to the Subject Judge, arguing that the company was not adequately complying with the reorganization plan because it was issuing worthless stock certificates.

Complainant states that the basis for this complaint of judicial misconduct is the Subject Judge's "mishandling of the Bankruptcy case." Specifically, Complainant alleges that he has been issued stock certificates in the reorganized company that are "functionally worthless" and that the Subject Judge "is doing NOTHING to make [the company] comply with HIS court mandates." (emphasis in original). Complainant requests that the Subject Judge be "force[d] . . . to do what the taxpayers pay his salary for."

This complaint reflects Complainant's disagreement with the company's bankruptcy reorganization plan and reiterates Complainant's unsuccessful arguments presented to the Subject Judge during the course of the bankruptcy proceeding. Accordingly, Complainant's allegations are 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, . . . without more, is merits-related."). Because 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*, these allegations are subject to dismissal.

Moreover, a careful review of the record reveals no basis for a claim that the Subject Judge is failing to do his job or has otherwise engaged in any form of judicial misconduct. Complainant's allegations are therefore also 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. §§ 352(b)(1)(A)(i) and (iii).

s/ D. Brooks Smith
Chief Judge

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ORDER

(Filed: June 13, 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) 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: June 14, 2018