

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. Nos. 03-18-90173 and 03-18-90174

IN RE: COMPLAINT OF JUDICIAL MISCONDUCT
OR DISABILITY

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

MEMORANDUM OPINION

(Filed: November 8, 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 Circuit Judge (“Subject Judge I”) and a United States District Judge (“Subject Judge II”). 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's allegations are not very clear, but he appears to contend that Subject Judge I did not issue a writ of mandamus compelling Subject Judge II to act on a civil matter concerning his "illegal imprisonment." Complainant also appears to complain that Subject Judge II issued an order administratively terminating his case. Furthermore, Complainant contends that Subject Judge I is somehow compelled to respond to Complainant's allegations of fraud pursuant to Rule 9 of the *Federal Rules of Civil Procedure* and that Complainant is entitled to relief under the Privacy Act.¹

In essence, Complainant seeks to challenge the correctness of rulings in his mandamus and civil 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*. Accordingly, Complainant's allegations are subject to dismissal.² Notably, a panel of this court (which did not include Subject Judge I) denied Complainant's petition for a writ of mandamus seeking to compel Subject Judge II to

¹ When the present complaints were initially docketed, Complainant sent a subsequent submission denying filing complaints of judicial misconduct. Complainant was directed to advise in writing whether he wished to withdraw the present complaints in accordance with Rule 27(a) of the *Rules for Judicial-Conduct and Judicial-Disability Proceedings*. Complainant did not thereafter seek to withdraw the complaints and thus the matters proceeded in accordance with Rule 11(a).

² Complainant also references two other judges in his submissions. I have considered these allegations in accordance with Rule 5 and conclude that the allegations do not provide "reasonable grounds for inquiry" into the existence of misconduct or disability and therefore decline to identify any complaints based upon them. *See* Rule 5, *Rules for Judicial-Conduct and Judicial-Disability Proceedings*.

enter summary judgment in his civil case. The panel concluded mandamus relief was not warranted and observed that Subject Judge II had issued an order administratively terminating Complainant's district court case when he failed to file a complete application to proceed *in forma pauperis*.

In any event, to the extent Complainant alleges that the Subject Judges' putative actions are due to an improper motive, his allegations are 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*. The record has been reviewed and there is no evidence of judicial misconduct. Indeed, his case was reopened and was recently reassigned to another District Judge for all further proceedings.

Based on the foregoing, this complaint will be dismissed pursuant to 28 U.S.C. §§ 352(b)(1)(A)(ii) and (iii).

s/ D. Brooks Smith
Chief Judge

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ORDER

(Filed: November 8, 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)(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 8, 2018