

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. Nos. 03-19-90008, 03-19-90009

IN RE: COMPLAINTS OF JUDICIAL MISCONDUCT
OR DISABILITY

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

MEMORANDUM OPINION

(Filed: February 27, 2019)

PRESENT: SMITH, *Chief Judge*.

These complaints are filed under the Judicial Conduct and Disability Act, 28 U.S.C. §§ 351-64, against two United States Bankruptcy Judges (“Subject Judge I” and “Subject Judge II”). For the reasons discussed below, the complaints 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 is a frequent pro se litigant who has pursued a personal injury claim in numerous federal courts throughout the country. The two current misconduct complaints

concern bankruptcy proceedings in two different jurisdictions in which Complainant was not awarded relief.

In both complaints, Complainant alleges that he applied to the Bankruptcy Court for a judicial determination of his personal injury claim and that Subject Judges I and II did not award him relief. He claims that Subject Judges I and II are discriminating against him and states, “I would like to know what’s keeping me from getting my settlement.”

These allegations dispute the Subject Judges’ rulings on Complainant’s claims 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 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*.

To the extent Complainant’s allegations of discrimination are not premised on his disagreement with the merits of judicial rulings, they are entirely unsubstantiated. The record provides no support for an inference that judicial misconduct has occurred. Such allegations are therefore 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, these complaints will be dismissed pursuant to 28 U.S.C. § 352(b)(1)(A)(ii) and (iii). Complainant previously filed two nearly identical complaints

of judicial misconduct naming two other Subject Judges. *See* J.C. Nos. 03-19-90003, 03-19-90004. Those complaints also were dismissed as merits-related, unsupported, and frivolous. Accordingly, 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 may 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, 2019)

PRESENT: SMITH, *Chief Judge*.

On the basis of the foregoing opinion entered on this date, it is ORDERED AND ADJUDGED that the written complaints brought pursuant to 28 U.S.C. § 351 are 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, 2019