

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. No. 03-19-90022

IN RE: COMPLAINT OF JUDICIAL MISCONDUCT
OR DISABILITY

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

MEMORANDUM OPINION

(Filed: June 5, 2019)

PRESENT: SMITH, *Chief Judge*.

This complaint is filed under the Judicial Conduct and Disability Act, 28 U.S.C. §§ 351-64, against a United States District Judge (“Subject Judge”). For the reasons discussed below, the complaint will be dismissed.¹

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).

¹ Many of Complainant’s allegations concern his former attorney and other individuals who are not covered by the Judicial Conduct and Disability Act. Accordingly, these allegations will not be addressed in this opinion. *See* 28 U.S.C. §§ 351, 352(b)(1)(A)(i); Rule 1(b), *Rules for Judicial-Conduct and Judicial-Disability Proceedings*.

This complaint concerns Complainant’s civil action seeking damages against a corporation after he was hit by a train belonging to that corporation. The Subject Judge granted a motion for summary judgment in part and denied it in part. The case is currently scheduled for trial. Complainant was represented by counsel, but counsel sought leave to withdraw and the Subject Judge granted him leave to do so. Accordingly, the trial date was postponed to provide time for Complainant to find a new attorney.

It is clear that the primary purpose of the present complaint is to contest and revisit the Subject Judge’s rulings in his civil action. For example, Complainant alleges that the Subject Judge should not have allowed his attorney to withdraw and the Subject Judge should not have continued the trial in his case.

Such merits-related allegations do not constitute cognizable misconduct under the Judicial Conduct and Disability Act. Rule 4(b)(1), *Rules for Judicial-Conduct and Judicial-Disability Proceedings* (“Cognizable misconduct does not include an allegation that calls into question the correctness of a judge’s ruling”); Rule 4(b)(2) (“Cognizable misconduct does not include an allegation about delay in rendering a decision or ruling”). Because they are non-cognizable, Complainant’s merits-related allegations will be dismissed. *See* 28 U.S.C. § 352(b)(1)(A)(ii); Rules 4(b)(1), 4(b)(2), 11(c)(1)(B), *Rules for Judicial-Conduct and Judicial-Disability Proceedings*. *See also In re Memorandum of Decision of Judicial Conference Committee on Judicial Conduct and Disability*, 517 F.3d 558, 561 (U.S. Jud. Conf. 2008) (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.”).

Complainant also appears to allege that the Subject Judge had an improper motive for his decisions and putative delay. For example, Complainant alleges that the trial was postponed because Complainant refused to attend a “blackmailing conference” and refused to take a mental health exam. There is no evidence for these allegations in the record. Nor is there any evidence for Complainant’s claim that the Subject Judge has engaged in “rudimentary behavior.” As noted above, the district court record makes clear that the most recent trial date was continued because communications between Complainant and his attorney broke down and the attorney was permitted to withdraw. A new trial date was set to allow Complainant “reasonable time to obtain replacement counsel.” Complainant’s allegations are 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: June 5, 2019)

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: June 5, 2019