

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. No. 03-20-90018

IN RE: COMPLAINT OF JUDICIAL MISCONDUCT
OR DISABILITY

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

MEMORANDUM OPINION

(Filed: May 4, 2020)

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 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 makes allegations concerning the putative actions of an attorney, sheriff’s office employees, and mortgage companies. Only federal judges, however, are covered by the Judicial Conduct and Disability Act. Accordingly, Complainant’s

allegations against these individuals and entities will not be addressed in this proceeding. 28 U.S.C. § 352(b)(1)(A)(i); Rule 1, *Rules for Judicial-Conduct and Judicial-Disability Proceedings*.

Complainant further alleges that the Subject Judge should not be permitted to convert her bankruptcy case to a Chapter 7 matter and should recuse herself. Complainant complains that the Subject Judge “is not checking the facts” and is “accepting false evidence.” It is evident that Complainant seeks to dispute the merits of the Subject Judge’s procedural rulings and decisions. Allegations disputing the merits of judicial rulings do not constitute cognizable misconduct under the Judicial Conduct and Disability Act. “Cognizable misconduct does not include an allegation that calls into question the correctness of a judge’s ruling, including a failure to recuse.” Rule 4(b)(1), *Rules for Judicial-Conduct and Judicial-Disability Proceedings*. Merits-related allegations are not cognizable as misconduct because 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.” *In re Memorandum of Decision of Judicial Conference Committee on Judicial Conduct and Disability*, 517 F.3d 558, 561 (U.S. Jud. Conf. 2008). Thus, all such non-cognizable allegations are subject to dismissal. *See* 28 U.S.C. § 352(b)(1)(A)(ii); Rules 4(b)(1), 11(c)(1)(B), *Rules for Judicial-Conduct and Judicial-Disability Proceedings*.

Petitioner also seeks the cancellation of a hearing because she fears exposure to the COVID-19 virus and maintains that she is unable to complete payoffs to creditors as states

have closed non-essential businesses. These allegations are subject to dismissal as frivolous because the record reflects that the hearing complained of was continued. Moreover, the Bankruptcy Court in question has issued an order regarding all court operations under the exigent circumstances created by COVID-19. This order is posted on the Court's website and addresses the concerns raised in Complainant's complaint of judicial misconduct.¹ 28 U.S.C. § 352(b)(1)(A)(iii); Rule 11(c)(1)(C), (D), *Rules for Judicial-Conduct and Judicial-Disability Proceedings*.

To the extent that Complainant's allegations are not based solely on her disagreement with the merits of the Subject Judge's rulings, they are again unsubstantiated. Complainant provides no evidence of bias, collusion, or corruption on the part of the Subject Judge, and the record reveals no evidence to support such claims. Complainant's remaining allegations are therefore subject to dismissal as frivolous and unsupported by evidence that would raise an inference that misconduct has occurred. *Id.*²

Based on the above, this complaint will be dismissed under 28 U.S.C.

¹ These allegations are likewise subject to dismissal as merits-related to the extent Complainant challenges the Subject Judge's scheduling order and other decisions in the underlying matter.

² Complainant also references two other federal judges and accuses them of "aggressive targeting" of Complainant's finances. These judges have not been named as Subject Judges, but I have nonetheless reviewed these allegations under Rule 5 of the *Rules for Judicial-Conduct and Judicial-Disability Proceedings*. Complainant's vague and unsubstantiated allegations do not constitute reasonable grounds for inquiry into the existence of judicial misconduct and I decline to identify a complaint. *Id.*

§ 352(b)(1)(A)(i), (ii), and (iii).

s/ D. Brooks Smith

Chief Judge

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. No. 03-20-90018

IN RE: COMPLAINT OF JUDICIAL MISCONDUCT
OR DISABILITY

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

ORDER

(Filed: May 4, 2020)

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: May 4, 2020