

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. No. 03-20-90041

IN RE: COMPLAINT OF JUDICIAL MISCONDUCT
OR DISABILITY

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

MEMORANDUM OPINION

(Filed: November 17, 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 District Judge (the “Subject Judge”).¹ 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

¹ Complainant also attempts to proceed against two state court judges. Because such individuals are not federal judges, they are not subject to the Judicial Conduct and Disability Act. *See* 28 U.S.C. §§ 351, 352(b)(1)(A)(i); Rule 4, *Rules for Judicial-Conduct and Judicial-Disability Proceedings*. As Complainant was informed by letter, the complaints against the state court judges were not docketed. Allegations of misconduct against them will not be addressed in this opinion.

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 filed a pro se complaint that was assigned to the Subject Judge. The matter was referred to a Magistrate Judge² who issued a report and recommendation recommending that the complaint be dismissed with prejudice pursuant to the *Rooker-Feldman* doctrine. Complainant did not timely file objections. The Subject Judge then issued an order adopting the report and recommendation and dismissing the complaint with prejudice. That same day, the District Court received a notice from Complainant indicating that his home had been destroyed in a fire and requesting a continuance of six to nine months. The Subject Judge denied the continuance request, expressing sympathy for Complainant's situation but explaining that a continuance would be futile because Complainant cannot cure the defects of the complaint. Complainant did not appeal.

This complaint of judicial misconduct attempts to collaterally attack the Subject Judge's order denying a continuance. Complainant alleges that, due to coronavirus and his house fire, "plaintiff should be give[n] a chance to file his brief." Complainant provides documentation including a report detailing the severity of the house fire. These allegations clearly concern the merits of a judicial decision. Merits-related allegations do not constitute cognizable misconduct. 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, including a failure to recuse.").

² The Magistrate Judge is not named as a Subject Judge of the complaint.

“The misconduct procedure [under the Judicial Conduct and Disability 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). Accordingly, Complainant’s merits-related 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*.

Because Complainant does not raise any non-merits-related allegations, this complaint will be dismissed pursuant to 28 U.S.C. § 352(b)(1)(A)(i) and (ii).

s/ D. Brooks Smith
Chief Judge

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ORDER

(Filed: November 17, 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) and (ii).

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 17, 2020