

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. No. 03-21-90012

IN RE: COMPLAINT OF JUDICIAL MISCONDUCT
OR DISABILITY

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

MEMORANDUM OPINION

(Filed: June 21, 2021)

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”). 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, the husband of a pro se litigant, seeks to make a “complaint of criminality” and alleges that the Subject Judge double timestamped documents and

concealed evidence of criminality.¹ Complainant asserts that the Subject judge should have permitted a jury trial and that the Subject Judge is biased and should recuse herself.²

It is apparent that Complainant's allegations reflect his dissatisfaction with the Subject Judge's decisions in his wife's civil suit. Allegations disputing the merits of judicial rulings do not, however, 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 failure to recuse" Rule 4(b)(1), *Rules for Judicial-Conduct and Judicial-Disability Proceedings*. 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). Accordingly, Complainant's 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*

¹ Complainant's spouse is the debtor in a Chapter 7 bankruptcy proceeding during which the bankruptcy judge authorized the sale of her house pursuant to a judgment of foreclosure. Although the bankruptcy judge is not named as a Subject Judge, the allegations against this judge and the other judges referenced in the complaint have been considered under Rule 5, *Rules for Judicial-Conduct and Judicial-Disability Proceedings*. I decline to identify a complaint based on Complainant's frivolous and merits-related allegations.

² Complainant's allegations concerning individuals who are not federal judges, such as Circuit Executive's Office staff and opposing counsel, will not be addressed in these proceedings because only federal judges are 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*.

for Judicial-Conduct and Judicial-Disability Proceedings. In any event, Complainant appealed the District Court's judgment and a panel of United States Court of Appeals Judges affirmed. The Subject Judge, moreover, is no longer assigned to Complainant's spouse's civil action.

To the extent Complainant's allegations are not merits-related, they are baseless. A review of the record reveals no evidence for judicial misconduct. Indeed, federal judges are not involved with the timestamping of documents because this is the responsibility of the clerk's office. Thus, Complainant's remaining allegations are 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, this complaint will be dismissed pursuant to 28 U.S.C. § 352(b)(1)(A)(i), (ii), and (iii). In view of the abusive and harassing language in his complaint, Complainant's attention is directed to Rule 10(a), *Rules for Judicial-Conduct*

*and Judicial-Disability Proceedings.*³

s/ D. Brooks Smith
Chief Judge

³ Rule 10(a), *Rules for Judicial-Conduct and Judicial-Disability Proceedings*, states:

(a) 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: June 21, 2021)

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 21, 2021