

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. No. 03-16-90072

IN RE: COMPLAINT OF JUDICIAL MISCONDUCT
OR DISABILITY

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

MEMORANDUM OPINION

(Filed: February 17, 2017)

PRESENT: SMITH, *Chief Judge*.

This is a complaint 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 was indicted on charges of sex trafficking by force. After a jury trial, he was found guilty of three counts. Counsel filed a motion for judgment of acquittal and for a new trial. Complainant later dismissed counsel and began filing pro se post-trial

motions, including motions to recuse the Subject Judge, to dismiss portions of the indictment, and to challenge the constitutionality of the statute of conviction. The Subject Judge declined to recuse and denied the motion to dismiss the indictment; the constitutional challenge remains pending. Complainant is apparently in the process of preparing a final pro se post-trial motion and has not yet been sentenced. He has filed a pro se petition for a writ of mandamus, which is pending before the Court of Appeals.

In this complaint of judicial misconduct, Complainant alleges that the government failed to prove all the elements of his crime and that he therefore was wrongfully convicted. He predicts that the Subject Judge will employ this allegedly wrongful conviction to impose a lengthy mandatory minimum sentence. Complainant claims that the Subject Judge is committing fraud and is “getting away with” a misapplication of the statute of conviction. Complainant surmises that this “scam” is financially motivated.

It is clear that these allegations are an attempt to collaterally challenge Complainant’s allegedly wrongful conviction and are therefore merits-related.¹ Rule 3(h)(3)(A), *Rules for Judicial-Conduct and Judicial-Disability Proceedings* (“An

¹ To the extent Complainant attempts to predict how the Subject Judge will sentence him, such allegations are entirely hypothetical. It is axiomatic that misconduct requires *actual* conduct. See Rule 3(g), *Rules for Judicial-Conduct and Judicial-Disability Proceedings* (defining misconduct). Speculation about the possibility of future conduct, without more, is insufficient to raise an inference that misconduct has occurred and is therefore subject to dismissal as frivolous and unsupported by any evidence of misconduct. 28 U.S.C. § 352(b)(1)(A)(iii); Rule 11(c)(1)(C), (D), *Rules for Judicial-Conduct and Judicial-Disability Proceedings*. A dispute with the sentence that the Subject Judge ultimately imposes would be merits-related and not cognizable as misconduct. 28 U.S.C. § 352(b)(1)(A)(ii); Rule 11(c)(1)(B), *Rules for Judicial-Conduct and Judicial-Disability Proceedings*.

allegation that calls into question the correctness of a judge’s ruling, including a failure to recuse, without more, is merits-related.”). Merits-related allegations 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*.

Complainant is not entitled to collaterally challenge the merits of his criminal conviction in this administrative forum. Indeed, Complainant has presented these arguments in several of his pro se post-trial motions, including a recusal motion, which the Subject Judge denied. In addition, similar arguments are before the Court of Appeals in Complainant’s petition for a writ of mandamus. Finally, Complainant’s criminal conviction is not ripe for an appeal on the merits because Complainant has yet to be sentenced. 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 merits-related allegations are subject to dismissal.

Complainant’s remaining allegations are entirely unsubstantiated. Complainant has offered no support for his suspicion that the Subject Judge is involved in financially-motivated “fraud.” Allegations based on mere conjecture and subjective belief 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, the complaint will be dismissed pursuant to 28 U.S.C. §§ 352(b)(1)(A)(ii) and (iii).

s/ D. Brooks Smith
Chief Judge

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ORDER

(Filed: February 17, 2017)

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)(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 17, 2017