

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. No. 03-17-90030

IN RE: COMPLAINT OF JUDICIAL MISCONDUCT
OR DISABILITY

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

MEMORANDUM OPINION

(Filed: June 19, 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 (hereinafter “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

¹ Complainant references a prior complaint of judicial misconduct that he filed against a Magistrate Judge. J.C. No. 03-14-90076. Complainant’s prior complaint was dismissed as merits-related and frivolous. To the extent Complainant seeks to collaterally attack the decision issued in J.C. No. 03-14-90076, his allegations are dismissed as merits-related. 28 U.S.C. § 352(b)(1)(A)(ii). Complainant’s current misconduct complaint refers to other putative actions by the Magistrate Judge, but Complainant did not choose to name her as a Subject Judge. Accordingly, I have considered the allegations concerning the Magistrate Judge under Rule 5, Rules for Judicial-Conduct and Judicial-Disability Proceedings. I conclude the allegations do not provide “reasonable grounds for inquiry” into the existence of misconduct or disability and I therefore decline to identify any complaints based upon them. See Rule 5, Rules for Judicial-Conduct and Judicial-Disability Proceedings.

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). 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).

As a preliminary matter, to the extent Complainant’s allegations concern actions by individuals who are not covered by the Judicial Conduct and Disability Act, including members of law enforcement, prosecutors, and others, the allegations will not be addressed in this opinion. See 28 U.S.C. §§ 351, 352(b)(1)(A)(i); Rule 4, *Rules for Judicial-Conduct and Judicial-Disability Proceedings*.

Complainant alleges that the Subject Judge “retaliated” against him by adopting the magistrate judge’s report and recommendation in a 28 U.S.C. § 2254 proceeding. Complainant further states that he was not given “due process” and that the Subject Judge took advantage of the putative lack of oversight by the Court of Appeals. The only support that Complainant provides for his allegations are copies of a subpoena for cell phone records, orders entered in his case, and the magistrate judge’s report and recommendation. In essence, Complainant seeks to collaterally attack the Subject Judge’s

rulings regarding Complainant's unsuccessful petition for relief under 28 U.S.C. § 2254. Thus, his allegations are dismissed as merits-related. See 28 U.S.C. § 352(b)(1)(A)(ii) (chief judge may dismiss a complaint if he or she finds that it is directly related to the merits of a decision or procedural ruling); Rule 3(h)(3)(A), *Rules for Judicial-Conduct and Judicial-Disability Proceedings* (“[a]n allegation that calls into question the correctness of a judge’s ruling . . . without more, is merits-related”); Rule 11(c)(1)(B), *Rules for Judicial-Conduct and Judicial-Disability Proceedings* (a complaint must be dismissed in whole or in part to the extent that the chief judge concludes that the complaint is directly related to the merits of a decision or procedural ruling). The present administrative proceedings are not the appropriate forum to collaterally attack the merits of the Subject Judge’s decisions. Notably, a panel of the Third Circuit Court of Appeals reviewed and denied Complainant’s request for a certificate of appealability.

In any event, the documents submitted by Complainant have been reviewed and they provide no evidence of judicial misconduct. Therefore, his allegations are dismissed as frivolous and unsupported by any 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*.

For the foregoing reasons, the complaint is 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 19, 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)(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.

Rule 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 19, 2017