

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

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J.C. Nos. 03-18-90001, 03-18-90002

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IN RE: COMPLAINT OF JUDICIAL MISCONDUCT  
OR DISABILITY

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

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MEMORANDUM OPINION

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(Filed: March 13, 2018)

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 (“Subject Judge I”) and a United States Magistrate Judge (“Subject Judge II”). 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, a state prisoner, filed a petition for a writ of habeas corpus. The matter was assigned to Subject Judge I, who referred it to Subject Judge II for a report and recommendation. In that report, Subject Judge II concluded that most of the habeas claims had been procedurally defaulted and the remaining claims lacked merit. She therefore recommended that the petition be denied. Complainant filed objections, arguing that Subject Judge II overlooked the traverse, failed to acknowledge that Complainant established grounds to excuse the procedural default of the habeas claims, and otherwise committed factual and legal errors. After considering the objections and conducting a de novo review, Subject Judge I overruled the objections, adopted the report and recommendation except insofar as it stated that Complainant failed to file a traverse, and denied the habeas petition. Complainant appealed, and the Court of Appeals granted a certificate of appealability on two issues. Ultimately, the Court of Appeals determined that the issues lacked merit and affirmed the District Court's judgment.

In this complaint of judicial misconduct, Complainant alleges that Subject Judge I and Subject Judge II conspired with the state prosecutor to "make a particular ruling" on the habeas petition. Specifically, Complainant alleges that Subject Judge II "lied" by stating in the report and recommendation that Complainant had not filed a traverse, and further alleges that the traverse established that the habeas claims were not procedurally defaulted and had merit. Complainant also alleges that, although Subject Judge I acknowledged that Complainant filed a traverse, Subject Judge I "gave a casual dismissal

to the matter, which implicates [Subject Judge I] as a co-conspirator.” Based upon these allegations, Complainant accuses the Subject Judges of obstruction of justice and conspiracy to obstruct justice. To accompany the complaint, Complainant provides documents from the state court criminal proceeding and the federal habeas proceeding, as well as several documents apparently concerning DUI charges against the state prosecutor.

Complainant expressly states that he is not challenging the correctness of the Subject Judges’ rulings in his habeas proceeding, acknowledging that 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*. Upon review, Complainant’s allegations of conspiracy and obstruction of justice are unsubstantiated. The sole support for a claim of misconduct on the part of Subject Judge II is the misstatement in the report and recommendation that Complainant did not file a traverse, when, in fact, he did file a traverse. This error does not, without more, provide any evidence to substantiate a claim of judicial misconduct.

The public docket clearly reflects that a traverse was filed, making Subject Judge II’s error readily apparent and undermining the characterization of the misstatement as a “lie.” Moreover, Subject Judge I acknowledged Subject Judge II’s misstatement when he conducted his *de novo* review. At that time, Subject Judge II considered the traverse and, indeed, did not adopt that portion of Subject Judge II’s report that misstated that no

traverse was filed. Thus, the record reveals that, although Subject Judge II made an erroneous statement in her report and recommendation, that error was addressed by Subject Judge I and, ultimately, the Court of Appeals concluded that Subject Judge I properly addressed the habeas petition. Thus, there is simply no reasonable basis for a conclusion that this error provides evidence of intentional wrongdoing. Complainant's allegations of conspiracy and obstruction of justice are therefore 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)(iii).

s/ D. Brooks Smith  
Chief Judge

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ORDER

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(Filed: March 13, 2018)

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)(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](http://www.ca3.uscourts.gov).

s/ D. Brooks Smith  
Chief Judge

Dated: March 13, 2018