

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. No. 03-18-90024

IN RE: COMPLAINT OF JUDICIAL MISCONDUCT
OR DISABILITY

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

MEMORANDUM OPINION

(Filed: April 19, 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 Circuit 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).

This complaint is concerned with three habeas petitions filed in 2015 by three prisoners, which have been pending before two District Judges who are not Subject Judges

of this complaint.¹ Complainant, whose relationship to the habeas petitions is not disclosed, alleges that he attempted to “file for the writ of habeas on the[prisoners’] behalf” by mailing two copies of a petition directly to the Subject Judge. The Subject Judge did not act on Complainant’s mailings. Complainant alleges that, by failing to act, the Subject Judge “violated [Complainant’s] civil and human rights, those of the three [prisoners], . . . U.S. statutory law, his oath of office, the U.S. Constitution, and the Universal Declaration of Human Rights and deserves to be impeached.”²

This is Complainant’s second complaint of judicial misconduct naming the Subject Judge, and it presents allegations identical to those of his prior complaint. *See* J.C. No. 03-16-90040. These allegations previously were dismissed as frivolous for the following reasons:

Putting aside the issue of whether Complainant, a non-lawyer, has any authority to submit court documents on behalf of other individuals, the Federal Rules of Appellate Procedure provide that any paper to be filed in a Court of Appeals must be filed with the Clerk. Fed. R. App. P. 25(a)(1). Complainant expressly acknowledges that he mailed this petition to Subject Judge I’s

¹ In recent months, a report and recommendation was issued in one proceeding recommending that the petition be dismissed for failure to prosecute, and a report and recommendation was issued in another proceeding recommending that the petition be denied.

² In addition to the complaint, Complainant filed a supplemental document containing allegations not verified under penalty of perjury as required by Rule 6(d), *Rules for Judicial-Conduct and Judicial-Disability Proceedings*. Upon review, it is apparent that these allegations do not provide information constituting “reasonable grounds for inquiry” into the existence of judicial misconduct. Accordingly, no complaint will be identified based upon the allegations in the supplemental document. Rule 5, *Rules for Judicial-Conduct and Judicial-Disability Proceedings*.

chambers directly, instead of properly filing it with the Clerk. A Circuit Judge may not act on a substantive legal matter unless it is in the context of a properly filed case to which he has been assigned by the Clerk's Office. Because Complainant's document was neither properly filed nor assigned by the Clerk to Subject Judge I, Subject Judge I did not have an obligation to act upon it.

This analysis continues to apply to Complainant's allegations concerning documents mailed directly to the Subject Judge. Because Complainant did not properly file his documents with the Clerk's Office and Complainant is not proceeding in a matter assigned by the Clerk to the Subject Judge, the Subject Judge was under no obligation to act. This complaint is 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*.

Because Complainant has twice presented the same frivolous allegations, Complainant's attention is directed to Rule 10(a), *Rules for Judicial-Conduct and Judicial-Disability Proceedings*.³ Future abuse of the judicial misconduct complaint procedure may result in the imposition of restrictions under this provision.

³ Rule 10(a) of the *Rules for Judicial-Conduct and Judicial-Disability Proceedings* provides:

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.

s/ D. Brooks Smith
Chief Judge

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: April 19, 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.

s/ D. Brooks Smith
Chief Judge

Dated: April 19, 2018