

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. No. 03-16-90064

IN RE: COMPLAINT OF JUDICIAL MISCONDUCT
OR DISABILITY

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

MEMORANDUM OPINION

(Filed: December 15, 2016)

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, a state prisoner, filed a *pro se* civil rights complaint under 28 U.S.C. § 1983, in which he claimed prison officials were deliberately indifferent to his serious

medical needs and that they retaliated against him for filing grievances. The matter was assigned to the Subject Judge. The defendants moved to dismiss the complaint for failure to state a claim. In response, Complainant filed, among other things, two declarations in support of his complaint. The declarations, dated July 4, 2016 and July 25, 2016, were received by the District Court and were docketed on July 8 and 29, respectively. On August 9, 2016, the Subject Judge granted the defendants' motion and dismissed the complaint. Complainant moved to alter or amend the judgment on the grounds that the July 4 and 25 declarations had not been considered. The Subject Judge denied the motion.

In this complaint of judicial misconduct, Complainant alleges that the Subject Judge or the Clerk of the District Court "never received [the July 4 and 25 declarations] or threw them out." Complainant disagrees with the Subject Judge's decision to dismiss his complaint, contending that the Subject Judge "could [not] possibly come to this conclusion" if he had considered the two declarations. Complainant clarifies that "my complaint is [that] my correspondence was tampered with," and that "my complaint is on the judge but the clerk may also be responsible or both." In support of the complaint, Complainant appends a portion of the Subject Judge's memorandum opinion dismissing the complaint, as well as copies of grievance forms and other documents that had been appended to the July 4 and 25 declarations.

With regard to the contention that the two declarations were "tampered with," not received by, or not properly entered on the docket in Complainant's civil rights

proceeding, the record flatly contradicts Complainant's claims. Both documents were received by the District Court and were entered onto the docket by Clerk's Office staff within a few days of Complainant mailing them. Because there is no evidence whatsoever to support any claim of tampering or impropriety in docketing, these allegations will be dismissed as patently frivolous.¹ 28 U.S.C. § 352(b)(1)(A)(iii); Rule 11(c)(1)(C), (D), *Rules for Judicial-Conduct and Judicial-Disability Proceedings*.

To the extent Complainant contends that the Subject Judge did not adequately consider the July 4 and 25 declarations or otherwise erred in rendering his decision to dismiss the complaint, such allegations are clearly merits-related. "An allegation that calls into question the correctness of a judge's ruling, . . . without more, is merits-related." Rule 3(h)(3)(A), *Rules for Judicial-Conduct and Judicial-Disability Proceedings*. Merits-related allegations are subject to dismissal because they 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*.

This administrative proceeding does not provide an opportunity to litigate a substantive challenge to the merits of the Subject Judge's order. Indeed, as previously

¹ Moreover, these allegations do not implicate any action by the Subject Judge. Clerk's Office personnel responsible for entering documents onto the public docket are not judges. Accordingly, such individuals are not covered by the Judicial Conduct and Disability Act and allegations concerning their actions are subject to dismissal on this basis as well. *See* 28 U.S.C. §§ 351, 352(b)(1)(A)(i); Rule 4, *Rules for Judicial-Conduct and Judicial-Disability Proceedings*.

noted, a motion for reconsideration presenting these same claims is currently pending before the Subject Judge. 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).

Based on the foregoing, the complaint will be dismissed pursuant to 28 U.S.C. §§ 352(b)(1)(A)(i), (ii), and (iii).

s/ D. Brooks Smith
Chief Judge

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. No. 03-16-90064

IN RE: COMPLAINT OF JUDICIAL MISCONDUCT
OR DISABILITY

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

ORDER

(Filed: December 15, 2016)

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: December 15, 2016