

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. No. 03-17-90004

IN RE: COMPLAINT OF JUDICIAL MISCONDUCT
OR DISABILITY

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

MEMORANDUM OPINION

(Filed: April 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 Magistrate 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 civil rights complaint in state court. He claimed that he has been illegally detained in violation of the United States Constitution and state law because there allegedly are no written orders setting forth his four state

criminal sentences. The defendant removed the matter to federal court and moved to dismiss the complaint. Complainant moved to remand the matter to state court and the Subject Judge set a briefing schedule for that motion. The defendant opposed remand. Before Complainant's reply brief was due, the Subject Judge issued an order denying remand.

After the parties consented to proceed before the Subject Judge for all purposes, she concluded that Complainant failed to state a claim upon which relief can be granted because, among other things, the state department of corrections submitted valid court commitments justifying Complainant's custody. Because amendment would be futile, the Subject Judge granted the defendant's motion to dismiss the complaint. Complainant appealed from the judgment, and the appeal remains pending.

In this complaint of judicial misconduct, Complainant alleges that the Subject Judge "went against her own order, and prejudiced the plaintiff" by denying the motion to remand prior to Complainant's deadline for filing a reply in support of that motion. According to Complainant, "[t]his is a clear abuse of power, abuse of process, along with legal injury." Complainant claims that the Subject Judge's failure to await his reply brief constitutes "a manifest error" that "occurred outside the performance of official duties," which "caused injustice by exercising judicial bias toward the Plaintiff."

The entirety of this Complaint is a challenge to the Subject Judge's decision to issue a ruling on the motion to remand before Complainant had the opportunity to file a reply brief. Clearly, these allegations are 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, Complainant is pursuing a merits appeal that is pending before the Court of Appeals; his merits-related allegations can and should be raised in that appeal. 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.

To the extent Complainant's claims of bias and injustice are not merits-related, they are entirely unsupported. The record provides nothing to substantiate allegations of misconduct. Accordingly, any remaining allegations 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: April 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: April 17, 2017