

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. No. 03-17-90043

IN RE: COMPLAINT OF JUDICIAL MISCONDUCT
OR DISABILITY

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

MEMORANDUM OPINION

(Filed: October 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 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).

Following a jury trial, Complainant was convicted of distribution and possession with intent to distribute cocaine, and other related drug offenses. A panel of the United States Third Circuit Court of Appeals affirmed the criminal judgment. The Court twice

denied certificates of appealability after Complainant filed unsuccessful post-judgment motions. Most recently, Complainant filed a mandamus petition in the District Court, which was denied. The Court of Appeals summarily affirmed the District Court's order denying Complainant's petition for a writ of mandamus and motion for an order to show cause.

In the present complaint of judicial misconduct, Complainant alleges that the Subject Judge "failed to remain impartial" and "intentionally" dismissed Complainant's motion for leave to proceed in forma pauperis as moot to protect the Assistant United States Attorney. The record has been reviewed and there is no evidence of judicial misconduct. Complainant's sole support for these allegations is his disagreement with the Subject Judge's rulings and actions in his mandamus proceedings. In particular, Complainant is upset about how his petition for writ of mandamus was docketed by the District Court Clerk's office and the Subject Judge's rulings on motions related thereto.¹ Complainant presented all of these allegations to the Subject Judge in his mandamus petition and again to the Court of Appeals in his unsuccessful appeal of the denial of his mandamus petition. Complainant's attempts to collaterally challenge those rulings in this administrative proceeding 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-

¹ Docketing is the responsibility of the Clerk's Office and not judges. Clerk's Office employees are not subject to the Judicial Conduct and Disability Act and, to the extent Complainant seeks to complain about the actions of Clerk's Office employees or other non-judges, his allegations are not cognizable under the Act. 28 U.S.C. § 352(b)(1)(A)(i).

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*. 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). Complainant’s merits-related allegations are therefore dismissed.

When considered apart from the merits-related allegations, it is apparent that Complainant offers no evidence to substantiate his claims of judicial misconduct on the part of the Subject Judge.² Nor does the record provide any support for a claim of judicial misconduct. Indeed, the Subject Judge issued an order granting Complainant’s motion to correct a clerical error. 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*.

² Complainant also filed an unsworn supplement to his initial complaint. This supplement makes allegations about putative conduct that occurred approximately seven years ago at the time of his original criminal trial and a suppression hearing. Notably, during the relevant time period, Complainant was represented by counsel and there is no record of any contemporaneous objection or complaint about the Subject Judge’s conduct. Moreover, the transcript for the suppression hearing has been reviewed and it does not reflect any evidence of judicial misconduct or disability. Accordingly, I conclude that Complainant’s unsupported and unsworn assertions do not constitute “reasonable grounds for inquiry” into whether the Subject Judge has “engaged in misconduct or has a disability.” Rule 5(a), *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)(i), (ii), and (iii).

s/ D. Brooks Smith
Chief Judge

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ORDER

(Filed: October 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)(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: October 17, 2017