

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. No. 03-17-90046

IN RE: COMPLAINT OF JUDICIAL MISCONDUCT
OR DISABILITY

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

MEMORANDUM OPINION

(Filed: August 15, 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.¹

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).

¹ Complainant filed a previous complaint of misconduct against the same Subject Judge that was dismissed as frivolous and merits-related. J.C. No. 03-11-90119. Complainant did not make any allegations about a putative disability in this prior complaint.

Complainant alleges that the Subject Judge treated him in a hostile and biased manner for years. Complainant further alleges that several unnamed attorneys told him that he would not be able to get relief from his criminal conviction because the Subject Judge disliked him. Complainant does explain or provide any detail regarding these allegations. Furthermore, Complainant provides no evidence to support his claims. Accordingly, Complainant's allegations are dismissed as unsupported by evidence that would raise an inference that misconduct has occurred. *See* 28 U.S.C. § 352(b)(1)(A)(iii); Rule 11(c)(1)(D), *Rules for Judicial-Conduct and Judicial-Disability Proceedings*.

Complainant also contends that he filed a number of motions which have been “arbitrarily denied.” Complainant's allegation is clearly merits-related and is, therefore, not cognizable under the Judicial Conduct and Disability Act. *See* 28 U.S.C. § 352(b)(1)(A)(ii); Rule 3(h)(3)(A), *Rules for Judicial-Conduct and Judicial-Disability Proceedings* (merits-related allegations do not constitute cognizable misconduct under the Judicial Conduct and Disability Act); Rule 11(c)(1)(B), *Rules for Judicial-Conduct and Judicial-Disability Proceedings*. To the extent Complainant seeks relief regarding his criminal conviction and/or habeas proceedings, these are claims that he must file in the District Court. *In re Memorandum of Decision of Judicial Conference Committee on Judicial Conduct and Disability*, 517 F.3d 558, 561 (U.S. Jud. Conf. 2008) (“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.”). Indeed, a review of the District Court docket reflects that Complainant has already filed a motion for relief raising some of the same allegations that he seeks to assert in the present administrative proceedings. Notably, the District Court denied the motion.

Complainant further alleges that the Subject Judge is disabled and requests that the Subject Judge retire “or that his disability be certified.” The Subject Judge has taken inactive senior status and is no longer assigned any cases. Accordingly, intervening events have rendered Complainant’s allegations moot. 28 U.S.C. § 352(b)(2); *see also* Rule 11(e), *Rules for Judicial-Conduct and Judicial-Disability Proceedings* (“The chief judge may conclude a complaint proceeding in whole or in part upon determining that intervening events render some or all of the allegations moot or make remedial action impossible.”).

Based on the foregoing, the complaint will be dismissed in part pursuant to 28 U.S.C. § 352(b)(1)(A)(ii), (iii) and concluded in part pursuant to 28 U.S.C. § 352(b)(2).

s/ D. Brooks Smith
Chief Judge

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ORDER

(Filed: August 15, 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 in part under 28 U.S.C. § 352(b)(1)(A)(ii), (iii) and concluded in part under 28 U.S.C. § 352(b)(2).

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: August 15, 2017