

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. No. 03-17-90081

IN RE: COMPLAINT OF JUDICIAL MISCONDUCT
OR DISABILITY

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

MEMORANDUM OPINION

(Filed: February 9, 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 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 was a defendant in a criminal proceeding before the Subject Judge. Initially, he dismissed his court-appointed counsel and chose to proceed pro se.

Complainant filed a number of pro se pretrial motions, including motions to dismiss the indictment, to suppress evidence, and for the Subject Judge's recusal. The Subject Judge denied the motions. Just before trial, Complainant requested counsel. The Subject Judge appointed counsel and the matter proceeded to a three-day jury trial. The jury found Complainant guilty and the Subject Judge sentenced him to a lengthy term of imprisonment. Complainant has filed a pro se appeal, which is pending.

In this complaint of judicial misconduct, Complainant alleges that the Subject Judge has engaged in a "miscarriage of justice" and "abuse of discretion." Among other things, Complainant alleges: (1) that his arrest violates his rights under the Fourth Amendment because the officers lacked jurisdiction to arrest him; (2) that evidence in his case was the fruit of an illegal search; and (3) that the police violated his right to due process by allowing a witness to identify him in an array allegedly including only one photo. Complainant further alleges that the Subject Judge erred by failing to grant Complainant's motions raising these alleged errors, and also by failing to recuse himself when Complainant presented these allegations as a basis for a recusal motion.

Clearly, Complainant's allegations are intended to collaterally attack the Subject Judge's decisions and rulings, and are therefore merits-related. "An allegation that calls into question the correctness of a judge's ruling, including a failure to recuse, without more, is merits-related." 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. *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.

Complainant's pending appeal provides the appropriate avenue for presenting legal arguments about the merits of the Subject Judge's decisions and rulings in the criminal proceeding. 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 will be dismissed.

It does not appear that Complainant has presented any cognizable claim of judicial misconduct in this complaint. Upon review, the record in the criminal proceeding reveals no basis for an inference that misconduct has occurred. Accordingly, to the extent any allegations remain, they 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, this 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: February 9, 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)(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: February 9, 2018