

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. No. 03-18-90203

IN RE: COMPLAINT OF JUDICIAL MISCONDUCT
OR DISABILITY

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

MEMORANDUM OPINION

(Filed: November 8, 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, a prisoner, has filed numerous habeas petitions pursuant to 28 U.S.C. § 2241. The Subject Judge denied one such petition in 2016. Complainant subsequently filed several post-judgment motions seeking to seal the case and to proceed as a “John

Doe,” arguing that he faced danger from other inmates based on the contents of court records. The Subject Judge denied the motions. On appeal of one such denial, the Court of Appeals affirmed the Subject Judge’s decision not to seal the entire case but remanded with the instruction that the Subject Judge should consider whether more limited restrictions may be appropriate.

On remand, the Subject Judge ordered supplemental briefing and ultimately denied the motion, concluding that Complainant had not met his burden of demonstrating that any sealing is necessary. Nine months later, Complainant appealed and filed a motion for relief from judgment. Both remain pending.

In this complaint of judicial misconduct, Complainant alleges, as he did in his motions to seal, that he faces danger from fellow inmates because of the contents of court records, including information in the opinions issued by the Subject Judge. He alleges, “[t]he Judge purposely, intentionally published those orders causing a substantial future risk of harm which is ongoing and continuing.”

Complainant clearly disagrees with the Subject Judge’s decision not to seal the record. This is a merits-related dispute. “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 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. Accordingly, Complainant's merits-related allegations will be dismissed.

Complainant also implies that the Subject Judge denied his motions to seal for the purpose of subjecting him to a risk of harm or some similar improper purpose. Because such allegations are entirely unsubstantiated, 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). Complainant has filed four prior complaints of judicial misconduct. *See* J.C. Nos. 03-09-90045, 03-09-90046, 03-17-90017, 03-17-90018. The prior complaints also were dismissed as merits-related, frivolous, and unsupported by any evidence that would raise an inference that misconduct has occurred. Complainant's attention is therefore directed to Rule 10(a), *Rules for Judicial-Conduct and Judicial-Disability Proceedings*.¹ Future abuse of the judicial misconduct complaint procedure may result in the imposition of restrictions under this provision.

¹ Rule 10(a) of the *Rules of Judicial-Conduct and Judicial-Disability Proceedings* provides:

Abusive Complaints. A complainant who has filed repetitive, harassing, or frivolous complaints, or has otherwise abused the complaint procedure, may be restricted from filing further complaints. After giving the complainant an opportunity to show cause in writing why his or her right to file further complaints should not be limited, the judicial council may prohibit, restrict, or impose conditions on the complainant's use of the complaint procedure.

s/ D. Brooks Smith
Chief Judge

Upon written request of the complainant, the judicial council may revise or withdraw any prohibition, restriction, or condition previously imposed.

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ORDER

(Filed: November 8, 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: November 8, 2018