

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. No. 03-18-90216

IN RE: COMPLAINT OF JUDICIAL MISCONDUCT
OR DISABILITY

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

MEMORANDUM OPINION

(Filed: January 23, 2019)

PRESENT: SMITH, *Chief Judge*.

This complaint is filed under the Judicial Conduct and Disability Act, 28 U.S.C. §§ 351-64, against a United States District Judge (the “Subject Judge”).¹ 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).

¹ To the extent Complainant’s allegations concern actions by individuals who are not covered by the Judicial Conduct and Disability Act, including government attorneys and others, the allegations will not be addressed in this opinion. *See* 28 U.S.C. §§ 351, 352(b)(1)(A)(i); Rule 4, *Rules for Judicial-Conduct and Judicial-Disability Proceedings*.

Complainant was convicted of robbery, carjacking, and kidnapping, among other offenses, and was sentenced to life imprisonment by the Subject Judge. Complainant proceeded pro se at trial, but had standby counsel. During the criminal trial, Complainant asserted that the District Court was without jurisdiction to try him because he did not acquiesce to the jurisdiction of the court. Complainant's jurisdictional arguments were rejected.

Complainant alleges that the Subject Judge "knowingly" and "willingly" aided and abetted the federal prosecutors in his criminal trial. In support of this contention, Complainant raises a number of disputes with decisions and rulings that the Subject Judge rendered during the course of the proceeding. Complainant's numerous disagreements with the Subject Judge's decisions and rulings are merits-related, and are therefore not cognizable in this proceeding. *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). Accordingly, all such claims are dismissed.² To the extent Complainant alleges that the Subject Judge's decisions support Complainant's conspiracy and/or impartiality claims, Complainant's allegations are dismissed as frivolous and

² Notably, Complainant filed a direct appeal and his merits-related arguments may be raised in the course of his appeal.

unsupported by sufficient evidence to 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*.

Complainant's allegation that the Subject Judge's question to the parties at a hearing about whether the Subject Judge had already ruled on a certificate of appealability constituted a "judicial signal" to the prosecutor is frivolous. 28 U.S.C. § 352(b)(1)(A)(iii); Rule 11(c)(1)(C), *Rules for Judicial-Conduct and Judicial-Disability Proceedings*. Nor does the question demonstrate that the Subject Judge had prejudged the issue. *Id.* Inasmuch as Complainant disputes the Subject Judge's decision regarding a certificate of appealability, the claim is merits-related. 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 also alleges that a family member was at a hearing and heard the Subject Judge refer to the defendants in a pejorative manner before Complainant entered the courtroom. Complainant provides no record evidence that this putative comment was made and does not name or otherwise identify the family member in question.

Complainant's allegation is dismissed because it lacks "sufficient evidence to raise an inference that misconduct has occurred" 28 U.S.C. § 352(b)(1)(A)(iii); Rule 11(c)(1)(D), *Rules for Judicial-Conduct and Judicial-Disability Proceedings*.

Complainant further alleges that the Subject Judge claimed to have been "threatened" by one of the defendants at trial and that this has created an "atmosphere of prejudice." Complainant has not provided any evidence that the Subject Judge is

prejudiced against him due to a putative comment made by another defendant. These allegations are dismissed as frivolous. 28 U.S.C. § 352(b)(1)(A)(iii); Rule 11(c)(1)(C), *Rules for Judicial-Conduct and Judicial-Disability Proceedings*.

For all of the foregoing reasons, the complaint is 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: January 23, 2019)

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: January 23, 2019