

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. No. 03-18-90220

IN RE: COMPLAINT OF JUDICIAL MISCONDUCT
OR DISABILITY

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

MEMORANDUM OPINION

(Filed: February 11, 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 attorneys, 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 alleges that the Subject Judge is biased against him and conspired with the prosecutor and his court-appointed attorney. In support of this contention, Complainant raises a number of disputes with the Subject Judge's decisions and rulings. For example, Complainant disputes the Subject Judge's "illegal rulings" and "illegal sentencing," as well as Complainant's "illegal" detention.² Complainant's 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. To the extent Complainant alleges that the Subject Judge's decisions support Complainant's conspiracy and/or bias claims, Complainant's allegations are dismissed as frivolous and 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*.

Regardless, there is no evidence of any judicial misconduct on the part of the Subject Judge. Complainant alleges that the "corrupt" Subject Judge "got" his

² Complainant has not been sentenced at this time and the District Court record reflects that the Subject Judge has ordered that Complainant be examined by a psychiatrist.

“ineffective lawyer” to withdraw a notice of appeal of a ruling on his suppression motion and other issues. Complainant alleges that this putative action is evidence of racial discrimination. This allegation is frivolous. The record reflects that the Subject Judge granted the counseled motion to withdraw the notice of appeal because the notice of appeal was filed without the involvement of his attorney and was, in the Subject Judge’s view, interlocutory. 28 U.S.C. § 352(b)(1)(A)(iii); Rule 11(c)(1)(C), *Rules for Judicial-Conduct and Judicial-Disability Proceedings*.³ To the extent Complainant seeks to collaterally attack the Subject Judge’s decision to grant the motion, Complainant’s allegation is denied as merits-related. 28 U.S.C. § 352(b)(1)(A)(ii).

Complainant further alleges that his attorney “high fived” a court reporter in the courtroom after Complainant pled guilty. Complainant alleges that the Subject Judge’s refusal to permit or order his attorney’s withdrawal after this incident is additional evidence of bias against him. Complainant contends that the Subject Judge is “hiding” behind the ineffective lawyer so that he can blame him for not “adequately representing” him.⁴ There is no evidence for these allegations. Indeed, as stated in his opinion, the Subject Judge observed no such conduct by Complainant’s attorney. Moreover, Complainant did not complain about his attorney’s alleged behavior prior to exiting the

³ The Subject Judge determined that the criminal case would proceed “despite the notice of appeal, unless the Court of Appeals directs otherwise.” The appeal remains pending in the Third Circuit.

⁴ Complainant’s current counsel is his fifth court-appointed attorney.

courtroom that day or at a subsequent change of plea hearing.⁵ Complainant's 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*.⁶

For all of the foregoing reasons, the complaint is dismissed pursuant to 28 U.S.C. §§ 352(b)(1)(A)(i), (ii), and (iii). Complainant filed three prior complaints of misconduct that were dismissed as frivolous and merits-related. *See* J.C. Nos. 03-18-90025, 03-18-90026, 03-18-90059. Complainant was previously cautioned that future abuse of the misconduct procedures could result in the imposition of sanctions under that rule. *See* Rule 10(a), *Rules for Judicial-Conduct and Judicial-Disability Proceedings*.⁷

Complainant nevertheless proceeded to file the present complaint that is also subject to

⁵ Complainant alleges that a U.S. Marshal also observed the putative incident, but did not identify the U.S. Marshal in either the present complaint or in a hearing before the Subject Judge.

⁶ If Complainant is seeking to collaterally attack the Subject Judge's ruling on the "high five" incident, then his allegations are dismissed as merits-related.

⁷ Rule 10(a), *Rules for Judicial-Conduct and Judicial-Disability Proceedings*, states:

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

dismissal as frivolous and merits-related. Because it appears that Complainant is engaged in abuse of the complaint procedure, a copy of this Memorandum Opinion and Order will be transmitted to the Judicial Council to determine whether to issue an order to show cause why Complainant should not be enjoined from filing further complaints under the Judicial Conduct and Disability Act.

/s/ D. Brooks Smith
Chief Judge

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ORDER

(Filed: February 11, 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: February 11, 2019