

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. No. 03-19-90042

IN RE: COMPLAINT OF JUDICIAL MISCONDUCT
OR DISABILITY

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

MEMORANDUM OPINION

(Filed: August 8, 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 Circuit Judge (“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 the District Attorney and/or state government employees, they will not be addressed in this opinion. Only federal judges are covered by the Judicial Conduct and Disability Act. See 28 U.S.C. §§ 351, 352(b)(1)(A)(i); Rule 1(b), *Rules for Judicial-Conduct and Judicial-Disability Proceedings*.

Complainant alleges that the Subject Judge should have recused himself from Complainant's appeals because he was a highly ranked state official prior to becoming a federal judge and, in that state role, expressed views in opposition to a moratorium on capital punishment and other views on capital punishment. Complainant further alleges that this judge, while a state official, requested information about the status of appeals filed by prisoners, including Complainant, who were then confined to death row. In support of his allegations, Complainant attaches a copy of an unsuccessful counseled recusal motion that was filed on his behalf.

It is evident that Complainant seeks to collaterally attack the denial of a counseled motion to recuse the Subject Judge that was denied more than a decade ago. Allegations that question the correctness of judicial rulings do not constitute cognizable misconduct under the Judicial Conduct and Disability Act. Rule 4(b)(1), *Rules for Judicial-Conduct and Judicial-Disability Proceedings* (“Cognizable misconduct does not include an allegation that calls into question the correctness of a judge’s ruling, including a failure to recuse.”). Complainant’s merits-related allegations therefore will be dismissed. See 28 U.S.C. § 352(b)(1)(A)(ii); Rules 4(b)(1), 11(c)(1)(B), *Rules for Judicial-Conduct and Judicial-Disability Proceedings*.

To the extent Complainant alleges that the Subject Judge had an improper motive for his rulings in Complainant’s appeal, Complainant’s allegations are likewise subject to dismissal. The record has been reviewed and there is no evidence of judicial misconduct. Indeed, a counseled petition for rehearing was submitted after the Third Circuit panel

(which included the Subject Judge) issued a precedential opinion and the petition was denied. Notably, Complainant subsequently filed a Rule 60(b)(6) motion in the District Court regarding the Subject Judge's refusal to recuse and the District Court denied the motion, concluding that Complainant failed to show the Subject Judge had a significant, personal involvement as a prosecutor in a critical decision regarding Complainant's conviction, direct appeal to the state Supreme Court, or state collateral appeal. Accordingly, the complaint is 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*.

For 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

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. No. 03-19-90042

IN RE: COMPLAINT OF JUDICIAL MISCONDUCT
OR DISABILITY

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

ORDER

(Filed: August 8, 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: August 8, 2019