

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. No. 03-19-90032

IN RE: COMPLAINT OF JUDICIAL MISCONDUCT
OR DISABILITY

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

MEMORANDUM OPINION

(Filed: May 20, 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”). 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 state prisoner, filed a petition for a writ of habeas corpus. The matter was assigned to the Subject Judge, who referred it to a Magistrate Judge for a report and recommendation. The Magistrate Judge recommended that the petition be

dismissed as untimely filed. The Subject Judge adopted the recommendation, dismissed the petition, and declined to issue a certificate of appealability. Complainant appealed, and the appeal remains pending.

In this complaint of judicial misconduct, Complainant alleges that the Subject Judge “violated Brady [versus] Maryland of disclosure of evidence that would have change[d] the outcome of the criminal trial case and the defendant would not be in prison today had the evidence be[en] disclosed that [was] favorable to the defendant.” Complainant claims that the alleged *Brady* violation constitutes “conspiracy and corruption” and violates Canons of the Code of Conduct for United States Judges, the Constitution, and federal law.

While the complaint is not clear, it appears that Complainant is attempting to challenge the dismissal of his habeas petition. Because such allegations question the correctness of a judicial ruling, they 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 they are not entirely merits-related, Complainant’s remaining allegations are lacking in evidentiary support. Complainant offers nothing to substantiate

his belief that the Subject Judge has engaged in “conspiracy and corruption” or any form of misconduct. A careful review of the record reveals no evidence to support such claims. Accordingly, Complainant’s remaining 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*.

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: May 20, 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)(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: May 20, 2019