

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. No. 03-19-90053

IN RE: COMPLAINT OF JUDICIAL MISCONDUCT
OR DISABILITY

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

MEMORANDUM OPINION

(Filed: October 18, 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

¹ Complainant also presents allegations concerning a deceased District Judge. Complainant was informed by letter that complaints of judicial misconduct naming deceased judges are not accepted. *See* Rule 1(b), *Rules for Judicial-Conduct and Judicial-Disability Proceedings* (complaints of misconduct may only be filed against judges currently holding office). Accordingly, the allegations concerning the deceased District Judge will not be considered in this opinion.

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 federal prisoner, filed a motion in the Court of Appeals seeking permission to file a successive petition for a writ of habeas corpus. In October 2018, the Court of Appeals granted the motion and transferred Complainant's habeas petition to the District Court, where it was assigned to the Subject Judge. The Government responded to the habeas petition in August 2019. The following month, the Subject Judge denied the petition.²

In this complaint of judicial misconduct, Complainant alleges that the Subject Judge "displayed contempt for both Local and Federal Rule[s] of Civil Procedure" by considering the Government's response to the habeas petition. Specifically, Complainant contends that, because the Government did not respond within fourteen days of the petition, the Government "legally defaulted on the Initial Brief, and Admitted all Facts," which "created a judicial estoppel to any cross argument" by the Government.

Clearly, Complainant's allegations challenge the merits of the Subject Judge's decisions and rulings in the course of the habeas proceeding, including the decision to permit the Government to file a late response to the habeas petition. "Cognizable misconduct does not include an allegation that calls into question the correctness of a judge's ruling, including a failure to recuse." Rule 4(b)(1), *Rules for Judicial-Conduct*

² Complainant also filed a mandamus petition in the Court of Appeals, seeking "immediate habeas" and reassignment to a different judge. The mandamus petition remains pending.

and Judicial-Disability Proceedings. Because Complainant's allegations do not constitute cognizable misconduct under the Judicial Conduct and Disability Act, they are subject to dismissal. *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.*

Apart from the merits-related allegations, Complainant does not provide evidence to substantiate a claim that judicial misconduct has occurred. A careful review of the record reveals nothing to substantiate such a claim. Accordingly, any 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)(i), (ii), and (iii). In the past, Complainant has filed other complaints of judicial misconduct that were dismissed as merits-related, unsupported, and frivolous. *See* J.C. Nos. 03-09-90072, 03-11-90091, 03-13-90037. Complainant's attention is therefore directed to Rule 10(a), *Rules for Judicial-Conduct and Judicial-Disability Proceedings.*³

³ Rule 10(a) of the *Rules for 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. Upon written request of the complainant, the judicial council may revise or withdraw any prohibition, restriction, or condition previously imposed.

Future abuse of the judicial misconduct complaint procedure may result in the imposition of restrictions pursuant to this provision.

s/ D. Brooks Smith
Chief Judge

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ORDER

(Filed: October 18, 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: October 18, 2019