

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. No. 03-20-90090

IN RE: COMPLAINT OF JUDICIAL MISCONDUCT
OR DISABILITY

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

MEMORANDUM OPINION

(Filed: February 18, 2021)

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 alleges that the Subject Judge engaged in secret ex parte communications and otherwise sought to influence the decision about whether he should be released from prison and placed on home confinement. Complainant, however, offers

no evidence for these allegations other than baseless speculation and innuendo.

Furthermore, the Subject Judge has already responded to these allegations on the record in Complainant's criminal case. The Subject Judge responded to the allegations in a letter that he published on the docket, stating that Complainant's "inferences/allegations that I have had some formal or informal involvement with the BOP's CARES Act decision in your case is utterly false and baseless. Any and all involvement I have had in this case, as is my practice in all my cases, is on the public record through written documents, opinions, orders, and court proceedings. I have had no part, whatsoever, in the BOP's determinations considering your custody . . . As I made very clear in my written decisions, 'any decision by the BOP that [the defendant] is not eligible for home confinement designation under the CARES Act, [is theirs] since the authority to make this determination lies with the BOP Director and not the court.'" Accordingly, 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*.

To the extent that Complainant seeks to dispute the merits of the Subject Judge's procedural rulings and decisions, his allegations are likewise subject to dismissal. Allegations disputing the merits of judicial rulings do not constitute cognizable misconduct under the Judicial Conduct and Disability Act. "Cognizable misconduct does not include an allegation that calls into question the correctness of a judge's ruling"

Rule 4(b)(1), *Rules for Judicial-Conduct and Judicial-Disability Proceedings*. Merits-related allegations are not cognizable as misconduct because 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). Thus, all such non-cognizable allegations 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*.

Based on the above, this complaint will be dismissed under 28 U.S.C. § 352(b)(1)(A)(ii) and (iii).

s/ D. Brooks Smith
Chief Judge

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. No. 03-20-90090

IN RE: COMPLAINT OF JUDICIAL MISCONDUCT
OR DISABILITY

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

ORDER

(Filed: February 18, 2021)

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: February 18, 2021