

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. No. 03-20-90010

IN RE: COMPLAINT OF JUDICIAL MISCONDUCT
OR DISABILITY

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

MEMORANDUM OPINION

(Filed: April 13, 2020)

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 Magistrate 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 filed a petition for a writ of habeas corpus. The parties consented to proceed before a Magistrate Judge, and the petition was assigned to the Subject Judge. The State filed a motion to dismiss. The Subject Judge granted the motion to dismiss,

dismissed the petition as untimely, and declined to issue a certificate of appealability. Complainant appealed and has sought a certificate of appealability from the Court of Appeals. The matter remains pending.

Rather than file a statement in support of her complaint of judicial misconduct, Complainant appended a copy of a document entitled “motion for leave to file an appeal” accompanied by more than two hundred pages of supporting exhibits. The motion was originally filed in the District Court and was docketed as a notice of appeal. It is presumed that Complainant intended for the allegations set forth in the motion to constitute her complaint of judicial misconduct.

In the motion, Complainant alleges that the Subject Judge “rendered the harshest of decisions without properly adjudicating [Complainant’s] case” and “slammed the door closed on [her] case and Petitioner’s civil rights.” Among other things, Complainant alleges that the Subject Judge adjudicated the petition “WITHOUT ANY record,” erroneously denied Complainant tolling of the limitations period, and improperly granted the State’s motion to dismiss, which Complainant contends was “moot.” Complainant argues that her habeas petition demonstrates that she suffered “an egregious miscarriage of justice” and that the Subject Judge “simply ignored it.” Complainant also provides substantial detail concerning the reasons why she believes she is entitled to habeas relief, including a description of an elaborate scheme to frame her, alleged conflicts of interest of state judges, prosecutors, and jury members, and hypotheses that the Subject Judge must be involved in the conspiracy because of a personal relationship with a deceased state

court judge and because the Subject Judge allegedly “owes her career” to an attorney involved in Complainant’s case.

It is apparent that the vast majority of Complainant’s allegations are intended to challenge the merits of decisions and rulings by the Subject Judge—in particular, the judgment dismissing Complainant’s habeas petition. Allegations disputing the merits of judicial rulings do not, however, 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, including a failure to recuse.” 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). Indeed, Complainant’s motion is pending in the Court of Appeals in support of her habeas appeal. This administrative proceeding is not an appropriate forum in which to litigate the merits of the pending appeal. Accordingly, Complainant’s 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*.

To the extent Complainant’s allegations are not based solely on a disagreement with the merits of the Subject Judge’s decisions and rulings, they lack support. A review of the record, including Complainant’s voluminous exhibits to the complaint, does not substantiate Complainant’s claims that the Subject Judge “ignored” Complainant’s habeas petition, participated in a conspiracy to frame Complainant, or otherwise engaged in any form of judicial misconduct. 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: April 13, 2020)

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: April 13, 2020