

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. Nos. 03-20-90014, 03-20-90015, 03-20-90016

IN RE: COMPLAINT OF JUDICIAL MISCONDUCT
OR DISABILITY

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

MEMORANDUM OPINION

(Filed: April 24, 2020)

PRESENT: SMITH, *Chief Judge*.

This complaint is filed under the Judicial Conduct and Disability Act, 28 U.S.C. §§ 351-64, against two United States District Judges (“Subject Judge I” and “Subject Judge II”) and a United States Circuit Judge (“Subject Judge III”). 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).

In 2002, Complainant, a state prisoner, filed a petition for a writ of habeas corpus that was assigned to Subject Judge I. Subject Judge I granted the writ on one claim and

denied the remaining claims. Both Complainant and the Government appealed. In 2006, a panel comprised of three judges including Subject Judge II (sitting by designation) and Subject Judge III reversed the judgment.¹ Complainant sought review. The Court of Appeals denied rehearing and the United States Supreme Court denied certiorari.

In this complaint of judicial misconduct, which was filed nearly a decade and a half after Subject Judges II and III issued their opinion and judgment reversing Subject Judge I's habeas grant, Complainant alleges that Subject Judges II and III conspired with Subject Judge I "to unlawfully, fraudulently fix a habeas corpus appellate case against Complainant."² Among other things, Complainant alleges that the Court of Appeals acted in the absence of jurisdiction and deprived Complainant of his right to fair and impartial adjudication. Complainant further contends that the reversal of the habeas grant reflects "actual and constructive fraud by employing an erroneous standard of review in determining whether appellate subject-matter jurisdiction existed" and was the result of "unconstitutional acts, usurpation of judicial power, *ultra vires* acts, actual/constructive/public fraud, to interfere with, impair, obstruct and defeat the lawful function of the federal court's purpose and obligation to provide [Complainant] the proper

¹ The third member of the panel is no longer a Circuit Judge and is not subject to the Judicial Conduct and Disability Act. *See* 28 U.S.C. § 351(d)(1); Rule 4, *Rules for Judicial-Conduct and Judicial-Disability Proceedings*.

² Complainant alleges that various prosecuting attorneys participated in the purported conspiracy. Because such individuals are not federal judges and therefore are not subject to the Judicial Conduct and Disability Act, *See* 28 U.S.C. §§ 351, 352(b)(1)(A)(i); Rule 4, *Rules for Judicial-Conduct and Judicial-Disability Proceedings*, allegations concerning actions by attorneys will not be addressed in this opinion.

administration of justice.” Complainant seeks, *inter alia*, the impeachment of the three Subject Judges.

It is apparent that many of Complainant’s allegations are intended to collaterally challenge the merits of Subject Judge II and III’s judgment reversing Subject Judge I’s grant of habeas relief. These allegations are merits-related and therefore do not constitute cognizable misconduct. “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). Accordingly, such 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 the allegations of the complaint are not merits-related, they are unsubstantiated. There is no evidence whatsoever of a conspiracy involving the three Subject Judges, and a review of the record reveals no basis for a misconduct claim. Accordingly, to the extent Complainant presents any non-merits-related allegations, they 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).

s/ D. Brooks Smith
Chief Judge

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ORDER

(Filed: April 24, 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)(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: April 24, 2020