

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. No. 03-20-90025

IN RE: COMPLAINT OF JUDICIAL MISCONDUCT
OR DISABILITY

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

MEMORANDUM OPINION

(Filed: June 30, 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 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 in which he claimed, *inter alia*, ineffective assistance of trial counsel. The petition was assigned to

the Subject Judge, who dismissed it as time-barred. Complainant filed a notice of appeal, and the Court of Appeals declined to issue a certificate of appealability.

Complainant filed this complaint of judicial misconduct naming the Subject Judge. Pursuant to Rule 11(b), *Rules for Judicial-Conduct and Judicial-Disability Proceedings*, the Subject Judge was asked to respond to Complainant's allegations. The Subject Judge submitted a response and the matter is now ripe for disposition.

Complainant's primary claim is that the Subject Judge should have recused from the habeas proceeding because the Subject Judge's son allegedly served as Complainant's trial counsel in the underlying state criminal proceeding.¹ In his response, the Subject Judge clarifies that the complaint is founded on a misstatement of fact: the attorney in question is not the Subject Judge's son. Rather, the attorney is the stepson of the Subject Judge's distant relative.

Without more, the fact that the Subject Judge's distant relative was an attorney in Complainant's criminal proceeding does not give rise to a circumstance in which the Subject Judge's impartiality might reasonably be questioned. *See, e.g.*, Canon 3(C)(1)(d)(iv), Code of Conduct for United States Judges (requiring disqualification where, *inter alia*, "a person related to [the judge] within the third degree of relationship . . . is to the judge's knowledge likely to be a material witness in the proceeding"); Canon

¹ Complainant also claims that the purported son and another attorney mishandled Complainant's criminal proceeding. 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 of misconduct by Complainant's former attorneys will not be addressed in this opinion.

3(C)(3)(a) (“[T]he following relatives are within the third degree of relationship: parent, child, grandparent, grandchild, great grandparent, great grandchild, sister, brother, aunt, uncle, niece, and nephew; the listed relatives include whole and half blood relatives and most step relatives.”).² Given this distant relationship, the Subject Judge’s decision not to recuse does not constitute conduct prejudicial to the effective and expeditious administration of the business of the courts. *See* Rule 11(c)(1)(A), *Rules for Judicial-Conduct and Judicial-Disability Proceedings*.

Because Complainant’s allegations are factually incorrect, they are subject to dismissal as 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)(D), *Rules for Judicial-Conduct and Judicial-Disability Proceedings*. Moreover, Complainant did not move for the Subject Judge’s recusal. A recusal motion must be presented to the appropriate judge in the first instance. A substantive decision rendered on such a motion is merits-related and therefore does not, without more, constitute cognizable misconduct. *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*.

Complainant further alleges that the judgment in his habeas proceeding resulted in “[a] fundamental miscarriage of justice.” It is apparent that this and related allegations are

² The Code of Conduct for United States Judges is designed to provide guidance to judges, but is not a set of disciplinary rules. “Ultimately, the responsibility for determining what constitutes misconduct under the statute is the province of the judicial council of the circuit subject to such review and limitations as are ordained by the statute and by these Rules.” Commentary on Rule 3, *Rules for Judicial-Conduct and Judicial-Disability Proceedings*.

intended to collaterally challenge the merits of the dismissal of Complainant's habeas petition. Such allegations do not constitute cognizable misconduct. *See* Rule 4(b)(1), *Rules for Judicial-Conduct and Judicial-Disability Proceedings*. Accordingly, these allegations are also 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 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: June 30, 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: June 30, 2020