

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. No. 03-20-90026

IN RE: COMPLAINT OF JUDICIAL MISCONDUCT
OR DISABILITY

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

MEMORANDUM OPINION

(Filed: August 17, 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’s son, a state prisoner, filed a lengthy petition for a writ of habeas corpus in 2015. The matter was referred to the Subject Judge last year. In April 2019, the Subject Judge issued a detailed report and recommendation concluding that the son’s

habeas petition lacks merit and should be denied. The son filed objections to the R&R as well as several motions, including a request for the Subject Judge's recusal. Recently, the presiding District Judge, who is not a Subject Judge of this complaint, adopted the Subject Judge's recommendation and denied the habeas petition as well as the pending motions. Among other things, the District Judge observed that the Subject Judge's work on the case was "fair, unbiased and comprehensive."

In this complaint of judicial misconduct, Complainant alleges that the Subject Judge "has portrayed nothing but shocking prejudice and Bias in his obvious Partiality to the Prosecution" in the son's habeas proceeding that has given rise to "tenable concerns of [the Subject Judge's] integrity." In support of the complaint, Complainant provides a copy of the affidavit in support of recusal filed by the son, in which the son contends that the Subject Judge issued reports reflecting "unsupported slander/defamation" and which did not adequately consider court filings.

Because this complaint of judicial misconduct reiterates the allegations of the son's court submissions, which the presiding District Judge considered on the merits, the allegations are merits-related. Merits-related allegations do not constitute cognizable misconduct. Rule 4(b)(1), *Rules for Judicial-Conduct and Judicial-Disability Proceedings* ("Cognizable misconduct does not include an allegation that calls into question the correctness of a judge's ruling, including a failure to recuse."). 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. Apart from the copy of the son's court submission on recusal, Complainant offers nothing to substantiate her claims that the Subject Judge is biased against her son and lacks integrity. The record reveals no evidence to support such allegations. Accordingly, Complainant's non-merits-related 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: August 17, 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: August 17, 2020