

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. Nos. 03-21-90030, 03-21-90031

IN RE: COMPLAINT OF JUDICIAL MISCONDUCT
OR DISABILITY

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

MEMORANDUM OPINION

(Filed: August 25, 2021)

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”). 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 pre-trial detainee, filed two pro se proceedings seeking release due to the COVID-19 pandemic: a civil rights action, which was assigned to Subject Judge I, and a petition for a writ of habeas corpus, which was assigned to Subject Judge II.

Subject Judge II dismissed the habeas petition for failure to exhaust state remedies. The Court of Appeals declined to issue a certificate of appealability. Subject Judge I dismissed the civil rights action for failure to state a claim. Complainant's appeal of the judgment remains pending.

In this complaint of misconduct, Complainant alleges that Subject Judge I and Subject Judge II colluded against him in order to "suppress [his] litigation efforts" and protect the defendants "from being held accountable for the reckless disregard to life they have continued [to] administer." In support, Complainant alleges that Subject Judge I's opinion dismissing his civil rights action made reference to Subject Judge II's habeas judgment before Complainant himself became aware of it. In addition, Complaint contends that Subject Judge II misconstrued his motion for a temporary restraining order, erroneously considering it a motion for reconsideration.

Complainant's allegations of collusion on the part of Subject Judges I and II are unsubstantiated. There is nothing nefarious in Subject Judge I's opinion referring to an order that Subject Judge II had placed on the public docket the week prior. Similarly, even if Complainant disagrees with Subject Judge II's construction of his motion, such a disagreement does not lend support to a claim of collusion. In short, a careful review of the record in the proceedings before Subject Judges I and II does not reveal any basis for Complainant's belief that the Subject Judges are colluding against him or have otherwise engaged in judicial misconduct. Accordingly, these 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*.

Moreover, to the extent that Complainant is attempting to collaterally attack the merits of judicial rulings rendered by Subject Judges I and II, such allegations are merits-related and 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.”). “The misconduct procedure [under the Judicial Conduct and Disability 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). Complainant’s merits-related allegations are therefore 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)(ii) and (iii).

s/ D. Brooks Smith
Chief Judge

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ORDER

(Filed: August 25, 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: August 25, 2021