

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. Nos. 03-16-90065; 03-16-90066

IN RE: COMPLAINT OF JUDICIAL MISCONDUCT
OR DISABILITY

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

MEMORANDUM OPINION

(Filed: February 2, 2017)

PRESENT: SMITH, *Chief Judge*.

This is a complaint filed under the Judicial Conduct and Disability Act, 28 U.S.C. §§ 351-64, against a United States District Judge (“Subject Judge I”) and a United States Magistrate Judge (“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 was a defendant in a state court traffic proceeding. He filed a pro se notice of removal to district court and sought to bring a number of claims against the state court. After issuing an order to show cause to which Complainant responded, Subject Judge II issued a report and recommendation concluding that the court lacked subject matter jurisdiction over the proceeding and therefore recommending dismissal. Subject Judge I adopted the report and recommendation and dismissed the matter with prejudice. Complainant then filed a number of motions, including objections to the report and recommendation, a motion for reconsideration, and a motion to clarify the dismissal. Shortly before Complainant filed this complaint of judicial misconduct, Subject Judge I denied the motions, reiterating that the district court lacked subject matter jurisdiction over Complainant's claims. Complainant did not appeal.¹

In this complaint of judicial misconduct, Complainant alleges that he suffered a deprivation of due process and other rights as a result of Subject Judge I's decision to dismiss the case. He claims that the district court had jurisdiction over the traffic proceeding and should have afforded him "a full hearing including oral argument" in light of the "substantial Constitutional violations involved" – specifically, his wish to challenge the constitutionality of the speeding statute under which the state action had been brought.

¹ Within the complaint of judicial misconduct, Complainant states that he "[k]indly request[s] that [his] petition be forwarded from Newark to the USDC 3rd Court of Appeals for your review as I will consider this as an appeal if the Newark Court refuses me a hearing." No action will be taken on this request, which was made within this confidential administrative proceeding and which is not an appropriate method for pursuing an appeal. Complainant should consult Fed. R. App. P. 3 and 4 concerning the proper procedure and timing for filing a notice of appeal.

Complainant further alleges that Subject Judge II “secretly” issued the report and recommendation without notifying Complainant, and then “ignored” his subsequent submissions, including his objections to the report and recommendation.

Complainant’s arguments concerning the dismissal of the removed state court proceeding are clearly merits-related. “An allegation that calls into question the correctness of a judge’s ruling, . . . without more, is merits-related.” Rule 3(h)(3)(A), *Rules for Judicial-Conduct and Judicial-Disability Proceedings*. Merits-related allegations do not constitute cognizable misconduct under the Judicial Conduct and Disability Act. *See* 28 U.S.C. § 352(b)(1)(A)(ii); Rules 3(h)(3)(A), 11(c)(1)(B), *Rules for Judicial-Conduct and Judicial-Disability Proceedings*. This administrative proceeding does not provide an opportunity for Complainant to litigate his substantive challenge to the merits of the district court order dismissing his case for lack of subject matter jurisdiction. 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, these allegations will be dismissed.

Complainant’s remaining claims are unsupported. Despite Complainant’s allegation that he did not receive Subject Judge II’s report and recommendation until long

after it was issued, the record reflects that notice was emailed to Complainant when the document was filed and that the document itself was made available on the public docket. Even accepting Complainant's allegation that he did not receive the notice, there is nothing to support a claim that Subject Judge II acted in "secret." Similarly, the record undermines Complainant's contention that either Subject Judge "ignored" Complainant's post-judgment motions; Subject Judge I disposed of those motions shortly before this complaint was filed. Thus, the record provides no substantiation for Complainant's allegations of misconduct, and 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, the 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: February 2, 2017)

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: February 2, 2017