

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. Nos. 03-17-90036, 03-17-90037, 03-17-90038, 03-17-90039

IN RE: COMPLAINT OF JUDICIAL MISCONDUCT
OR DISABILITY

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

MEMORANDUM OPINION

(Filed: August 15, 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 three United States Circuit Judges (“Subject Judge II,” “Subject Judge III,” and “Subject Judge IV”). 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 federal prisoner, filed a petition for a writ of habeas corpus in the District Court. The matter was assigned to Subject Judge I, who entered an order

transferring the petition to the Court of Appeals to be treated as an application to file a second or successive habeas petition. A panel of the Court of Appeals comprised of Subject Judges II, III, and IV denied Complainant's application. Complainant sought rehearing, which was denied. Complainant also filed a petition for a writ of certiorari to the United States Supreme Court, which also was denied.

In this complaint of judicial misconduct, Complainant alleges that extraneous documents, which Complainant did not file, were submitted to the Court of Appeals along with his application to file a second or successive habeas petition. Specifically, he alleges that he intended to file a document of 12 pages in length but, upon requesting a copy of his submission after the application was denied, he received a copy of a document "consist[ing] of 46 pages, with 34 pages of documents that had no bearing on the issues presented to the Court." Based upon this alleged discrepancy, Complainant surmises that "either personal opinion has taken the place of the rule of law and the Constitution, or/and in conjunction with submissions that were not that of [Complainant], or were his filings with documents attached that took away or totally confused the issues being presented and supported to the Court." Complainant contends that the alleged discrepancy constitutes "altering of a federal record or document," which allegedly has "kept me in prison, in order to cover-up the misdeeds of others for what can only be personal reasons by abusing their positions."

To the extent Complainant's allegations are intended to collaterally challenge the decision by Subject Judge I to transfer his habeas petition to the Court of Appeals, or the

decision by Subject Judges II, III, and IV to deny the application to file a second or successive habeas petition, such allegations are 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*. 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, any merits-related allegations will be dismissed.

Complainant offers nothing whatsoever to substantiate his suspicion that Subject Judges I, II, III, or IV directed court employees to add extraneous documents to his application.¹ A review of the record in Complainant’s proceeding does not reveal any irrelevant or inappropriate documents. Because Complainant did not provide a copy of the “34 pages of documents that had no bearing on the issues presented to the Court,” it is not possible to determine precisely which documents Complainant is referring to. It must

¹ A judge generally does not play a direct role in docketing documents, and there is no indication that any of the Subject Judges did so here. Docket entries are created by court employees, who are not covered by 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*.

be noted, however, that the local rules of the Court of Appeals provide that an application to file a second or successive habeas petition must be accompanied by several documents, including a copy of any prior habeas petitions. *See* 3d Cir. L.A.R. 22.5(a). It is further noted that Complainant’s prior habeas petition, which was transmitted to the Court of Appeals along with his application to file a second or successive habeas petition, is 36 pages long. It is therefore possible that the prior habeas petition may be the “irrelevant” document. If so, its transmission to the Court was entirely appropriate under applicable rules. And if not, and even if truly irrelevant documents were erroneously included along with Complainant’s application, there is simply no basis for concluding that the error was the result of judicial misconduct. Accordingly, Complainant’s 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)(i), (ii), and (iii). Complainant has filed at least three prior complaints of judicial misconduct that were dismissed on these grounds. *See* J.C. Nos. 05-45, 03-09-90006-07, 03-10-90064. Complainant’s attention is therefore directed to Rule 10(a), *Rules for Judicial-Conduct and Judicial-Disability Proceedings*.² Future abuse of the

² Rule 10(a) of the *Rules for Judicial-Conduct and Judicial-Disability Proceedings* provides:

Abusive Complaints. A complainant who has filed repetitive, harassing, or frivolous complaints, or has otherwise abused the complaint procedure, may

judicial misconduct complaint procedure may result in the imposition of restrictions under this provision.

s/ D. Brooks Smith
Chief Judge

be restricted from filing further complaints. After giving the complainant an opportunity to show cause in writing why his or her right to file further complaints should not be limited, the judicial council may prohibit, restrict, or impose conditions on the complainant's use of the complaint procedure. Upon written request of the complainant, the judicial council may revise or withdraw any prohibition, restriction, or condition previously imposed.

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. Nos. 03-17-90036, 03-17-90037, 03-17-90038, 03-17-90039

IN RE: COMPLAINT OF JUDICIAL MISCONDUCT
OR DISABILITY

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

ORDER

(Filed: August 15, 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)(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: August 15, 2017