

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. No. 03-18-90016

IN RE: COMPLAINT OF JUDICIAL MISCONDUCT
OR DISABILITY

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

MEMORANDUM OPINION

(Filed: March 27, 2018)

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 (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 attempted to file a document with the Subject Judge that was titled “Application to Convene a Special Grand Jury.” In it, Complainant alleged that certain

state court officials had committed offenses against him, and that the Office of the United States Attorney acted to cover up those offenses. Writing on behalf of the Subject Judge, the Clerk of Court returned the document to Complainant with a letter stating that only the Office of the United States Attorney may file a criminal complaint in District Court. Complainant alleges that this response indicates that the Subject Judge is acting in concert with the Office of the United States Attorney to cover up the state officials' offenses against Complainant. Complainant accuses the Subject Judge of wrongdoing and criminal activity including obstruction of justice, participation in a conspiracy, and depriving Complainant of his rights.

Upon review, it is apparent that Complainant's allegations of judicial misconduct are baseless, as they are premised solely upon the letter from the Clerk of the District Court indicating that a private individual cannot initiate a special grand jury proceeding.¹ Complainant offers no credible evidence to substantiate his claims that the Subject Judge is involved in criminal activity or has otherwise engaged in 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

¹ To the extent Complainant's allegations concern actions by the Clerk of the District Court and employees of the Office of the United States Attorney, 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 against non-covered individuals are beyond the scope of this proceeding and will not be addressed in this opinion.

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) and (iii).

s/ D. Brooks Smith
Chief Judge

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ORDER

(Filed: March 27, 2018)

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) 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: March 27, 2018