

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. No. 03-18-90083

IN RE: COMPLAINT OF JUDICIAL MISCONDUCT
OR DISABILITY

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

MEMORANDUM OPINION

(Filed: May 30, 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 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, a state prisoner, filed a pro se petition for a writ of habeas corpus. The petition was referred to the Subject Judge for a report and recommendation. The matter remains pending.

In this complaint of judicial misconduct, Complainant alleges that he is the victim of a complex plot involving a number of state actors. Specifically, Complainant alleges that a state court judge and state prosecutor have conspired with state corrections officials to schedule Complainant's release date to coincide with that of Complainant's nephew, who is imprisoned at the same facility as Complainant. Complainant further alleges that state officials are aware of a plot by fellow inmates to murder Complainant's nephew, and that they intend for Complainant be present at the attack on the nephew so that both Complainant and his nephew will be killed.¹

Complainant's allegations are devoid of specific allegations concerning the Subject Judge's role in the alleged conspiracy against him. Instead, Complainant generally states that the Subject Judge "engaged in collusion/facilitation to place complainant in imminent danger of serious physical injury or death through conduct prejudicial to the effective and expeditious administration of the business of the courts and is unable to discharge all the duties of office by reason of mental or physical disability." Complainant offers no evidence whatsoever to support these allegations. Upon careful review, the record reveals nothing to substantiate these claims of judicial misconduct and disability. Complainant's allegations are therefore subject to dismissal as frivolous and unsupported by evidence

¹ Complainant alleges misconduct by a number of individuals who are not federal judges and who are therefore 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 individual are beyond the scope of this proceeding and will not be addressed in this opinion.

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) and (iii).

s/ D. Brooks Smith
Chief Judge

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ORDER

(Filed: May 30, 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: May 30, 2018