

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. No. 03-18-90193

IN RE: COMPLAINT OF JUDICIAL MISCONDUCT
OR DISABILITY

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

MEMORANDUM OPINION

(Filed: October 23, 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).

In 2016 and 2017, Complainant filed twelve habeas petitions pursuant to 28 U.S.C. § 2241, which were assigned to the Subject Judge. The Subject Judge denied five petitions on grounds that Complainant’s claims were not cognizable in a habeas petition

under § 2241. He dismissed two for failure to exhaust administrative remedies and three others as moot. He transferred one petition to a different federal court and denied a final petition on the merits. Complainant appealed the disposition of seven of the petitions. The Court of Appeals affirmed six of the judgments, and the final appeal was dismissed for failure to prosecute.

In this complaint of judicial misconduct, Complainant alleges that the Subject Judge improperly denied several petitions as non-cognizable when the petitions allegedly “all . . . have valid merit.” Complainant further contends that the denials indicate that the Subject Judge “does not like 2241 motions.” In addition, Complainant disagrees with the Subject Judge’s decision to dismiss two petitions for failure to exhaust, arguing that exhaustion should have been excused. Finally, Complainant alleges that “there are still several cases I have pending on [the Subject Judge’s] docket” that have been “[s]itting from time periods of 9 months to 2 years.”

First, it is apparent that Complainant’s disagreement with the Subject Judge’s denial of five petitions as non-cognizable and the dismissal of two petitions for failure to exhaust are merits-related allegations. “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. Accordingly, these allegations will be dismissed.

Next, to the extent that Complainant’s allegation that the Subject Judge “does not like 2241 motions” is not a merits-related allegation, it is baseless. Complainant offers no evidence whatsoever to substantiate a claim that the Subject Judge denied any petitions solely due to personal dislike or a similar improper motive. Moreover, a review of the record reveals that the Subject Judge provided legal reasoning to support each of his decisions. Accordingly, this allegation is 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)(D), *Rules for Judicial-Conduct and Judicial-Disability Proceedings.*

Finally, to the extent Complainant alleges that “several cases” continue to remain pending, this claim is unsupported. The record reveals that all of Complainant’s petitions have been resolved within a reasonable time period and that no petitions remain pending. This allegation is therefore subject to dismissal as frivolous. 28 U.S.C. § 352(b)(1)(A)(iii); Rule 11(c)(1)(C), *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: October 23, 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)(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: October 23, 2018