

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. No. 03-18-90222

IN RE: COMPLAINT OF JUDICIAL MISCONDUCT
OR DISABILITY

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

MEMORANDUM OPINION

(Filed: February 11, 2019)

PRESENT: SMITH, *Chief Judge*.

This complaint is filed under the Judicial Conduct and Disability Act, 28 U.S.C. §§ 351-64, against a United States District Judge (the “Subject Judge”).¹ 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).

¹ To the extent Complainant’s allegations concern actions by individuals who are not covered by the Judicial Conduct and Disability Act, including attorneys, U.S. Marshals, and detention facility staff, the allegations will not be addressed in this opinion. *See* 28 U.S.C. §§ 351, 352(b)(1)(A)(i); Rule 4, *Rules for Judicial-Conduct and Judicial-Disability Proceedings*.

Complainant was sentenced to 155 years in prison by the Subject Judge for unlawful sexual contact with minors. Complainant's allegations in the present complaint are premised on the Subject Judge's putative actions during his criminal proceedings, which occurred more than a decade ago. For example, Complainant alleges that the Subject Judge failed to investigate allegations of mistreatment in a local prison while he was a pretrial detainee and that the Subject Judge should have held a competency hearing. Complainant's disagreements with the Subject Judge's decisions and rulings are merits-related, and are therefore not cognizable in this proceeding. *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, all such claims are dismissed.²

In any event, Complainant was represented by counsel during his criminal proceedings and filed a direct appeal. A panel of Third Circuit Judges affirmed the judgment and sentence of the District Court. To the extent Complainant alleges that the Subject Judge's decisions and actions during his criminal trial support Complainant's vague bias and corruption claims, Complainant's allegations are dismissed as frivolous

² Notably, Complainant was evaluated by a psychologist who concluded that he was competent, notwithstanding a diagnosis of Delusional Disorder.

and unsupported by sufficient evidence to 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*.³

Complainant further alleges that the Subject Judge should not have allowed the U.S. Marshals to put a security device on Complainant during the bench trial. The trial transcript reflects that Complainant's attorney asked the Subject Judge about the use of the device. The Subject Judge asked the U.S. Marshal to describe the device on the record. The U.S. Marshal explained that the device would only be activated if Complainant engaged in any type of destructive or dangerous type of activity during the trial. Complainant's counsel did not thereafter object to the use of the device and the trial proceeded. In essence, Complainant seeks to collaterally attack the Subject Judge's decision to authorize the U.S. Marshals to use the device. This is a merits-related allegation and is not cognizable in these proceedings. 28 U.S.C. § 352(b)(1)(A)(ii). Furthermore, Complainant presents no evidence of an improper motive for the Subject Judge's authorization of this security device. Under these circumstances, Complainant's allegation is also subject to dismissal as unsupported by any evidence that would raise an

³ Complainant also makes allegations concerning another District Judge and Magistrate Judge that he has not named as Subject Judges in these proceedings. I have considered the allegations under Rule 5, *Rules for Judicial-Conduct and Judicial-Disability Proceedings*. I have concluded that these allegations do not provide "reasonable grounds for inquiry" into the existence of misconduct or disability and decline to identify any complaints based on these allegations. *Id.*

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ORDER

(Filed: February 11, 2019)

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: February 11, 2019