

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. No. 03-17-90033

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 (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 was a defendant in a criminal proceeding before the Subject Judge. After a trial, a jury convicted him of charges relating to threatening FBI agents and their

family members. The Subject Judge sentenced Complainant to a term of imprisonment, directed that Complainant must undergo a psychiatric evaluation, and prohibited Complainant from further contact with the victims or local FBI agents. After sentencing, the matter was reassigned to a new District Judge, who is not a subject of this complaint. Complainant has filed a number of post-judgment motions, which remain pending. Complainant has not yet appealed.

Complainant filed this complaint of judicial misconduct shortly after he was sentenced. In it, he takes issue with the Subject Judge's decision to limit his contact with FBI agents. He alleges that "she violated the First Amendment's guarantee to petition for redress and access to courts as applied to [Complainant]" and subjected him to "egregious and hostile treatment." In addition, Complainant disagrees with the Subject Judge's decision to order a psychiatric evaluation and her statement that Complainant has "mental problems."

To the extent these allegations are intended to collaterally challenge aspects of the sentence imposed by the Subject Judge, 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). Complainant’s disputes with the terms of his sentence should be raised in any appeal from the criminal judgment against him, not in this administrative proceeding. Accordingly, all merits-related allegations will be dismissed.

Complainant further alleges that the Subject Judge “badgered and grossly treated [Complainant].” Specifically, Complainant alleges that, in response to his statement that he has sent FOIA requests to foreign governments, the Subject Judge “yell[ed] at him, ‘Why would you do that!’ as though it’s wrong.” Even accepting Complainant’s allegation as true, this single instance in which the Subject Judge expressed frustration with Complainant, without more, does not rise to the level of judicial misconduct. Indeed, “expressions of impatience, dissatisfaction, annoyance, and even anger” arising during ordinary efforts at courtroom administration do not establish bias or partiality, unless they reveal such a high degree of antagonism or favoritism as to make fair judgment impossible. *See Liteky v. United States*, 510 U.S. 540, 555 (1994); *see also United States v. Wecht*, 484 F.3d 194, 220 (3d Cir. 2007) (same). Complainant has not alleged antagonism, favoritism, or any behavior that rises to the level of demonstrably egregious

and hostile treatment constituting judicial misconduct under Rule 3(h)(1)(D), *Rules for Judicial-Conduct and Judicial-Disability Proceedings*. Accordingly, this allegation is subject to dismissal because it does not constitute conduct prejudicial to the effective and expeditious administration of the business of the courts and because it 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)(A), (D), *Rules for Judicial-Conduct and Judicial-Disability Proceedings*.

Complainant next presents allegations concerning the Subject Judge's marriage. Although public records reveal that the Subject Judge has been married for nearly two decades, Complainant contends that her marriage "lowers confidence in her honorability and her Court." A Subject Judge's personal conduct may constitute judicial misconduct only if it "might have a prejudicial effect on the administration of the business of the courts, including a substantial and widespread lowering of public confidence in the courts among reasonable people." Rule 3(h)(2), *Rules for Judicial-Conduct and Judicial-Disability Proceedings*. Because Complainant's allegations do not give rise to a substantial and widespread lowering of public confidence in the courts among reasonable people, they will be dismissed. 28 U.S.C. § 352(b)(1)(A)(iii); Rule 11(c)(1)(A), *Rules for Judicial-Conduct and Judicial-Disability Proceedings*.

Finally, Complainant alleges that the Subject Judge's appointment to the federal bench approximately fifteen years ago was the result of "connections" to unidentified

transportation officials, to whom the Subject Judge allegedly now provides unspecified “special political and legal treatment.” Complainant offers nothing whatsoever to substantiate these vague accusations, which are so lacking in indicia of reliability that no further inquiry is warranted. *See* Commentary to Rule 11, *Rules for Judicial-Conduct and Judicial-Disability Proceedings*. Accordingly, these allegations will be dismissed 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)(ii) and (iii). This is Complainant’s third complaint of judicial misconduct to be dismissed on these grounds. *See* J.C. Nos. 03-14-90089–90, 03-17-90002. Complainant’s attention is therefore directed to Rule 10(a), *Rules for Judicial-Conduct and Judicial-Disability Proceedings*.¹ Future abuse of the judicial misconduct complaint procedure may result in the imposition of restrictions under this provision.

¹ Rule 10(a) of the *Rules of 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 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.

s/ D. Brooks Smith
Chief Judge

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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)(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