

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. No. 03-17-90064

IN RE: COMPLAINT OF JUDICIAL MISCONDUCT
OR DISABILITY

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

MEMORANDUM OPINION

(Filed: September 12, 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, a state prisoner, filed a pro se civil rights complaint, which the Subject Judge dismissed as frivolous. Complainant moved for leave to amend the

complaint, which the Subject Judge granted. Complainant then filed several motions and a voluminous set of exhibits. The Subject Judge denied the motions and concluded that the exhibits did not constitute an amended complaint. Most recently, Complainant filed motions for the Subject Judge's recusal and to alter or amend the judgment, as well as a proposed amended complaint. The motions remain pending.

In this complaint of judicial misconduct, Complainant alleges that the decision to dismiss his complaint and to deny his motions for reconsideration and other relief reflect bias and prejudice on the part of the Subject Judge. Complainant alleges that the Subject Judge's opinions contain "stern and/or aggressive wording" and "false allegations and outright lies." According to Complainant, these decisions reflect "abuse of [the Subject Judge's] official capacity." Complainant further alleges that the Subject Judge has treated "other non-legal educated litigators" in a similar manner, which "demonstrate[es] bias and prejudice to a class of individuals (pro-se litigators)."

It is apparent that Complainant's allegations are largely intended to challenge decisions and rulings rendered by the Subject Judge, and are therefore 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*.

Indeed, Complainant's pending motion for the Subject Judge's recusal rests upon many of the same allegations. 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, Complainant's merits-related allegations will be dismissed.

Complainant's allegations of bias are unsubstantiated. Apart from Complainant's disagreement with the merits of the Subject Judge's rulings in his civil rights proceeding, Complainant offers no evidence that the Subject Judge harbors a bias against him personally or against pro se litigants generally. Upon review of the Subject Judge's opinions and orders, it is apparent that the Subject Judge has not employed inappropriately "stern and/or aggressive wording" as Complainant alleges. Moreover, even if the Subject Judge had employed a "stern" tone, it must be noted that "expressions of impatience, dissatisfaction, annoyance, and even anger" 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). The Subject Judge's opinions and orders do not display 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*.¹

Accordingly, all remaining allegations are subject to dismissal 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).

s/ D. Brooks Smith
Chief Judge

¹ To the extent Complainant alleges that the Subject Judge’s opinions and orders contain “false allegations and outright lies,” the allegation is merits-related and is therefore subject to dismissal. *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*.

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ORDER

(Filed: September 12, 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: September 12, 2017