

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. No. 03-17-90066

IN RE: COMPLAINT OF JUDICIAL MISCONDUCT
OR DISABILITY

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

MEMORANDUM OPINION

(Filed: September 28, 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 pro se litigant, was a plaintiff in two civil proceedings before the Subject Judge. In the first proceeding, during a hearing, the Subject Judge told

Complainant “you’re in the wrong spot” without making a similar statement to the attorneys that were present. In addition, the Subject Judge stated, “I’m hoping not to see too much more of you, frankly, as a legal matter, I’ll put it that way, not a personal matter.” Complainant alleges these statements reflect bias against him.¹ In the second proceeding, the Subject Judge rendered two summary judgment decisions that, according to Complainant, ignored evidence in Complainant’s favor, applied an incorrect legal standard, and unfairly gave the defendants “another bite of the same apple” while denying him similar treatment. Complainant alleges that these decisions further demonstrate the Subject Judge’s bias.

Complainant’s allegations contesting the Subject Judge’s summary judgment rulings in the second proceeding are clearly 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*. Moreover, Complainant has appealed the judgment entered in the second proceeding, and that appeal remains pending. 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

¹ In that proceeding, the Subject Judge ultimately dismissed the complaint. Complainant appealed and the Court of Appeals affirmed the judgment.

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.

When considered apart from the merits-related allegations, Complainant's claim of bias rests entirely upon the two above-quoted comments that the Subject Judge made during a hearing in the first proceeding. While it is apparent that Complainant felt personally offended by the comments, they are neither objectively inappropriate nor hostile, nor do they appear to have been made for any improper purpose. Moreover, "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, 555-56 (1994); *see also United States v. Wecht*, 484 F.3d 194, 220 (3d Cir. 2007) (same). The statements Complainant has identified do not demonstrate a high degree of favoritism or antagonism, nor do they rise 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, these allegations are subject to dismissal as 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*.

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: September 28, 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 28, 2017