

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. No. 03-18-90008

IN RE: COMPLAINT OF JUDICIAL MISCONDUCT
OR DISABILITY

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

MEMORANDUM OPINION

(Filed: April 20, 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 Magistrate 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 is an attorney who is representing himself in a lawsuit he filed against a local internal revenue bureau.¹ Complainant engaged in discovery and filed multiple motions in the civil suit. Approximately one month prior to the filing of the present complaint of judicial misconduct, the Subject Judge issued an order to show cause to Complainant and the defendant's attorney. The Subject Judge ordered them to appear at a hearing and show cause why they should not be held in contempt of court for failing to appear at a pretrial status conference. The docket reflects that a hard copy of this order was sent return receipt requested to Complainant. A return receipt was later uploaded to the docket.

Complainant failed to appear at the hearing and, one day before Complainant filed his complaint of judicial misconduct, the Subject Judge issued an order holding Complainant in contempt. The Subject Judge thereafter received Complainant's written response to the order to show cause. Complainant's response explained that Complainant had not received notice of the orders regarding the status conference he failed to appear for. Although the Subject Judge "questioned the veracity of [Complainant's] claims because [Complainant] has a registered email account with the Court," the Subject Judge nonetheless discharged the order to show cause as to Complainant and vacated the monetary sanction imposed. One week later, and subsequent to the filing of the present

¹ In 2013, the Third Circuit's Committee on Attorney Discipline issued an order of reciprocal discipline suspending Complainant from the practice of law.

complaint of judicial misconduct, the Subject Judge recused himself from the civil action, which remains pending and has been reassigned to another magistrate judge.

Complainant alleges that the Subject Judge “illicitly refused to serve the required notices of hearing” and that the Subject Judge has “previously refused to provide notice of orders issued.” Complainant further alleges that the Subject Judge’s actions “are based upon an improper motive.” Complainant states, moreover, that the Subject Judge used the hardships created by severe weather conditions “to use his official powers in an abusive and outrageous manner.” Complainant provides no evidence in support of these allegations and they are contradicted by the record. The docket reflects that notices of two scheduling orders were sent as text orders. As noted by the Subject Judge in his order, Complainant - an attorney - has a registered email account with the court and receives email notices via CM-ECF.² In addition, the docket reflects that the order to show cause was both emailed and sent by certified mail, return receipt requested. Thus, there was no “illicit[]” refusal to serve orders. Furthermore, the Subject Judge ultimately vacated the contempt order after receiving Complainant’s response. Accordingly, there is no evidence of judicial misconduct and Complainant’s allegations are subject to dismissal as frivolous and unsupported by evidence that would raise an inference that misconduct has occurred.

² The record reflects that in 2016 Complainant filed a motion for permission to use electronic case filing and affirmed that he had regular access to an email account he could access on a daily basis to receive notifications from the Court and notices from the e-filing system. The Subject Judge granted this motion.

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 intends to prevent his case from going to trial and “preclude the introduction of evidence.” Complainant complains that the Subject Judge sustained all of the defendants’ objections and denied Complainant’s discovery requests. Complainant also states that the Subject Judge refused to “enter a scheduling order” in 2015. In essence, Complainant takes issue with many of the Subject Judge’s decisions and actions in his civil suit. These allegations are all 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*. Accordingly, these allegations are subject to dismissal.

Complainant further alleges that the Subject Judge “wants to delay and impede[] the efficient and fair disposition of this case.” These allegations of delay are likewise dismissed as merits-related. 28 U.S.C. § 352(b)(1)(A)(ii). *See also* Rules 3(h)(3)(A), 3(h)(3)(B) (cognizable misconduct does not include “an allegation about delay in

³ Complainant references a prior complaint of judicial misconduct filed by another individual against the Subject Judge. J.C. No. 03-13-90012. The complaint in question was dismissed as frivolous and merits-related and does not provide any support for Complainant’s current allegations.

rendering a decision or ruling, unless the allegation concerns an improper motive in delaying a particular decision or habitual delay in a significant number of unrelated cases”), 11(c)(1)(B), *Rules for Judicial-Conduct and Judicial-Disability Proceedings*. To the extent Complainant suggests there was an improper motive for the putative delay, his allegations are dismissed pursuant to 28 U.S.C. § 352(b)(1)(A)(iii) as unsupported by any evidence that would raise an inference that misconduct occurred.

Finally, Complainant alleges that the Subject Judge “evinces an appalling lack of ‘fairness’ and ‘impartiality’” and that the Subject Judge has “precluded basic discovery from being held in this case to protect the financial interests of his friends and associates.” Complainant’s allegations are premised on nothing more than speculation and innuendo. The record has been reviewed and there is no evidence of judicial misconduct. Complainant’s 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

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. No. 03-18-90008

IN RE: COMPLAINT OF JUDICIAL MISCONDUCT
OR DISABILITY

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

ORDER

(Filed: April 20, 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: April 20, 2018