

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. No. 03-19-90028

IN RE: COMPLAINT OF JUDICIAL MISCONDUCT
OR DISABILITY

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

MEMORANDUM OPINION

(Filed: May 20, 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 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, a prisoner, is a pro se plaintiff in a civil rights proceeding in a matter that has been referred to the Subject Judge. Approximately one year ago, the presiding

District Judge ordered Complainant to file an amended complaint.¹ In response, Complainant requested to hold the case in abeyance to permit him to locate counsel. The District Judge granted a stay of six months and administratively closed the case.

At the end of the six-month period, Complainant sought a further stay because he had not obtained counsel. The defendants opposed the stay request and sought dismissal. The Subject Judge reopened the case and lifted the stay, but declined to dismiss and instead directed Complainant to file an amended complaint pro se. In response, Complainant moved to strike the Subject Judge's order, arguing that he had not been permitted to respond to the defendants' opposition to a stay. The Subject Judge granted Complainant an opportunity to file a response, but Complainant did not do so. Accordingly, the Subject Judge once again directed Complainant to file an amended complaint.

In this complaint of judicial misconduct, Complainant argues that he declined to file an opposition to the defendants' dismissal motion because his "objections would be reduced to a formality and [the Subject Judge] already determined how the matter would proceed notwithstanding Petitioner[']s objections." He contends that the Subject Judge's order directing him to file an amended complaint pro se was unfair because prison officials are "censoring and retaining all privileged communications from attorneys," making it impossible for him to locate counsel to represent him. Complainant alleges that

¹ The presiding District Judge is not named as a Subject Judge of this complaint.

the Subject Judge's decision to deny a stay and direct him to proceed pro se demonstrates "bias for the Defendants in assisting them to close the case."

It is clear that many of Complainant's allegations dispute the Subject Judge's rulings, including the decision to order Complainant to file an amended complaint pro se rather than grant additional time to permit him to locate counsel. Such allegations do not constitute cognizable misconduct under the Judicial Conduct and Disability Act. Rule 4(b)(1), *Rules for Judicial-Conduct and Judicial-Disability Proceedings* ("Cognizable misconduct does not include an allegation that calls into question the correctness of a judge's ruling, including a failure to recuse."). Because they are not cognizable, Complainant's merits-related allegations will be dismissed. *See* 28 U.S.C. § 352(b)(1)(A)(ii); Rules 4(b)(1), 11(c)(1)(B), *Rules for Judicial-Conduct and Judicial-Disability Proceedings*.

Complainant's remaining allegations are lacking in evidentiary support. First, although Complainant believes that the Subject Judge *would have* pre-judged the outcome of the dispute *if* he had filed response to the defendants' motion, this is purely speculative because Complainant never filed any response at all. Allegations based on mere conjecture and subjective belief 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*.

Second, Complainant's allegations of bias are based on Complainant's disagreement with the merits of the Subject Judge's rulings. To the extent the allegations are not entirely merits-related, Complainant provides nothing to substantiate them. A careful review of the record lends no evidentiary support to the bias claim. Accordingly, the allegations of bias are also subject to dismissal as frivolous and unsupported by evidence that would raise an inference that misconduct has occurred. *See* 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

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ORDER

(Filed: May 20, 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)(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: May 20, 2019