

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. No. 03-19-90037

IN RE: COMPLAINT OF JUDICIAL MISCONDUCT
OR DISABILITY

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

MEMORANDUM OPINION

(Filed: July 3, 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 District Judge (“Subject Judge”).¹ 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).

¹ To the extent Complainant’s allegations concern actions by defendant’s counsel and the court reporter, they will not be addressed in this opinion. These individuals are not covered by the Judicial Conduct and Disability Act. See 28 U.S.C. §§ 351, 352(b)(1)(A)(i); Rule 4, *Rules for Judicial-Conduct and Judicial-Disability Proceedings*.

In the underlying civil suit, the Subject Judge denied Complainant's request to vacate an order dismissing his lawsuit following a settlement between the parties. The Subject Judge also denied a subsequent filing titled "Relief from Order." Complainant appealed, and a panel of Third Circuit judges affirmed the District Court's order denying Complainant's motion for "Relief from Order." Complainant alleges that the Subject Judge has an "improper monetary motive" and "wrongfully conspired" with defendant's counsel to "make a particular ruling." Complainant further alleges that the Subject Judge engaged in an "ex parte communication," treated him in an egregious and hostile manner, and made "inappropriately partisan" statements toward Complainant.

Although Complainant contends that he is not questioning the merits of the Subject Judge's rulings, it is clear that he is in fact attempting to collaterally attack the Subject Judge's orders. Allegations questioning the correctness of judicial rulings 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."). Complainant's merits-related allegations therefore 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*.

To the extent Complainant alleges that the Subject Judge had an improper motive for his actions and conspired with defendant's counsel, Complainant's allegations are dismissed as frivolous and unsupported by sufficient evidence to 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*. The record has been reviewed and there is no evidence of judicial misconduct. Indeed, as noted above, Complainant appealed the Subject Judge's decision and a Third Circuit panel affirmed the District Court's order denying Complainant's motion for "Relief from Order." The panel concluded, "Upon review of the record, we find no error whatsoever in the District Court's denial of [Complainant's] second motion. [Complainant's] motion failed to present any new evidence, facts, or issues that would tend to show that the settlement agreement was fraudulent, or that the District Court made some sort of mistake in its judgment . . . Furthermore, [Complainant] failed to point to any other reason to vacate the dismissal."

Finally, Complainant alleges that the Subject Judge engaged in improper *ex parte* communications when he spoke with defense counsel without Complainant present during settlement discussions. Complainant also alleges that he was treated in an egregious or hostile manner. Speaking with one party at a time during settlement negotiations is not improper and is, in fact, a standard practice. The *Code of Conduct for U.S. Judges* explicitly authorizes judges to obtain the parties' consent to "confer separately with the parties and their counsel in an effort to mediate or settle pending matters." Canon 3A(4)(d). Furthermore, even if the Subject Judge made the statements as alleged by Complainant about the potential risk of proceeding with his suit and questioning him about how he was going to prove excessive force, such statements are not "partisan" or

otherwise improper in the context of settlement discussions. Accordingly, these allegations are dismissed as frivolous and unsupported by sufficient evidence to 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*.

For all of the foregoing reasons, the complaint is dismissed pursuant to 28 U.S.C. §§ 352(b)(1)(A)(i), (ii), and (iii).

s/D. Brooks Smith
Chief Judge

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ORDER

(Filed: July 3, 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)(i), (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: July 3, 2019