

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. No. 03-19-90044

IN RE: COMPLAINT OF JUDICIAL MISCONDUCT
OR DISABILITY

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

MEMORANDUM OPINION

(Filed: September 4, 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 (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).

Through counsel, Complainant filed a civil rights action in which he alleged racial discrimination and harassment by his former employer, the campus security department of a university. The matter was assigned to the Subject Judge.

Complainant's counsel filed a motion to recuse the Subject Judge on grounds that the Subject Judge has a very close relationship with the university's law school, which allegedly gave rise to an appearance of impropriety. The Subject Judge denied the recusal motion. Although the Subject Judge acknowledged his relationship with the law school, he concluded that the relationship was analogous to other cases in which recusal was not granted. The Subject Judge observed that his contacts with the law school "are routine in nature and do not amount to a unique circumstance that would cause a reasonable person to call into question [his] impartiality." Finally, the Subject Judge concluded that his relationship with the law school was "entirely tangential" to Complainant's case, which was against the university as a whole. Complainant did not seek reconsideration from the Subject Judge or relief in the Court of Appeals. Ultimately, the Subject Judge awarded summary judgment to the university on all but one claim. The parties settled that claim and the proceeding was dismissed.

In this pro se complaint of judicial misconduct, Complainant reiterates the grounds for the recusal motion, arguing that the Subject Judge's close relationship with the university's law school gave rise to a conflict of interest in Complainant's suit against the university. Clearly, the complaint calls into question the merits of the Subject Judge's decision to decline to recuse. The allegations therefore do not constitute cognizable misconduct under the Judicial Conduct and Disability Act. *See* 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.”). Such non-cognizable allegations are subject to dismissal. *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*.

Moreover, the Subject Judge’s status as a graduate of the university’s law school and his continuing connection with that institution do not, without more, establish that the Subject Judge could not act impartially in Complainant’s civil rights proceeding against the university. *See* Canon 3(C)(1)(a), Code of Conduct for United States Judges¹ (requiring disqualification where “the judge has a personal bias or prejudice concerning a party”). Nor has Complainant identified the kind of close relationship with a party that would normally require disqualification. *See* Canon 3(C)(1)(d), Code of Conduct for United States Judges (requiring disqualification where, *inter alia*, the judge, the judge’s spouse, or a relation within the third degree is a party to, a lawyer in, or a material witness in the proceeding). In sum, the allegations of the complaint do not rise to the level of judicial misconduct and are subject to dismissal for that reason as well. *See* 28 U.S.C. § 352(b)(1)(A)(iii); Rule 11(c)(1)(D), *Rules for Judicial-Conduct and Judicial-Disability Proceedings*.

¹ The Code of Conduct for United States Judges is designed to provide guidance to judges, but is not a set of disciplinary rules. “While the Code’s Canons are instructive, ultimately the responsibility for determining what constitutes cognizable misconduct is determined by the Act and these Rules, as interpreted and applied by judicial councils, subject to review and limitations prescribed by the Act and these Rules.” Commentary on Rule 4, *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 4, 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: September 4, 2019