

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. No. 03-19-90046

IN RE: COMPLAINT OF JUDICIAL MISCONDUCT
OR DISABILITY

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

MEMORANDUM OPINION

(Filed: September 11, 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).

This complaint of judicial misconduct concerns a criminal proceeding over which the Subject Judge has presided since 2015. The defendant in that matter faces charges of stalking, wire fraud, and other crimes. Shortly after the defendant’s arraignment, defense

counsel sought and was granted a psychiatric evaluation of the defendant. After the evaluation and several competency hearings, the Subject Judge concluded that the defendant is competent to stand trial but not competent to represent himself pro se. The defendant remains in custody and the Subject Judge is in the process of scheduling a trial.

During the course of the proceeding, the defendant has filed a multitude of pro se motions and other documents concerning varied subjects. The Subject Judge has repeatedly advised him that submissions should be filed by his counsel. The docket, which is now more than 130 pages long and contains more than 1,000 entries, reflects hundreds of such pro se submissions by the defendant. In 2018, the defendant filed one such document, which he titled as a notice of the principles and tenets of his religion. In response, the Subject Judge entered a text order stating that no action will be taken on the notice (as well as several other documents on various topics filed around the same time) in order to avoid confusion and in light of the defendant's representation by counsel.

Complainant, whose relationship to the defendant in the criminal proceeding is unclear and is not disclosed in his complaint of judicial misconduct, alleges that the Subject Judge is biased against the defendant based upon the defendant's "religious and cultural roots." Quoting the text order, Complainant alleges that the Subject Judge "mocked the religion" of the defendant. Based upon this, Complainant claims, "[i]t is understood that [the Subject Judge] specifically requested that the defendant's conditions of confinement prevent him from receiving normal privileges because of [the defendant's] religion]."

Upon review, it is readily apparent that the text order upon which Complainant relies does not mock the defendant or his religion. A review of the record similarly yields no support for Complainant's allegations. The Subject Judge has issued many dozens of orders in the defendant's proceeding, and none mocks the defendant or supports a claim of religious bias. The allegations of the complaint are therefore subject to dismissal as patently frivolous and unsupported by any 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)(iii).

s/ D. Brooks Smith
Chief Judge

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ORDER

(Filed: September 11, 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)(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 11, 2019