

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. No. 03-19-90047

IN RE: COMPLAINT OF JUDICIAL MISCONDUCT
OR DISABILITY

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

MEMORANDUM OPINION

(Filed: November 19, 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).

Complainant was a defendant in a criminal proceeding before the Subject Judge. After Complainant pleaded guilty to one charge of wrongful disclosure of health

information, the Subject Judge sentenced her to a twelve month term of imprisonment. Complainant did not appeal.

In this complaint of judicial misconduct, Complainant alleges that the Subject Judge pre-judged her sentence and then “leaked” information about the sentence to one of the crime victims¹ in advance of Complainant’s sentencing hearing. Complainant further alleges that the victim “is one of the strongest [political] supporters” in the area, and that, because the Subject Judge has “strong ties” to that political party, “[the victim’s] money and her involvement had influence on [Complainant’s] case.” Complainant further alleges that the Subject Judge was “rude and sarcastic in the courtroom” and “sneered” at Complainant’s husband during his testimony. Finally, Complainant contends that the Subject Judge should have recused himself from her criminal proceeding because the Subject Judge has “ties” with the organization that employed Complainant before she committed the crime to which she pleaded guilty.

Pursuant to Rule 11(b), *Rules for Judicial-Conduct and Judicial-Disability Proceedings*, the Subject Judge was asked to respond to Complainant’s allegations and to provide a transcript of the sentencing hearing. The Subject Judge submitted a response and the transcript. The complaint is now ripe for disposition.

¹ The individual that Complainant references is neither named nor identified by initials in the indictment, and that individual did not testify at Complainant’s sentencing. The record reveals that there were 111 unidentified victims of Complainant’s activities, and some of them provided written victim impact statements and were present in the courtroom during Complainant’s sentencing. It is not clear, however, whether the specific individual referenced in the complaint provided such a statement or was present at the hearing.

As an initial matter, “[c]ognizable misconduct does not include an allegation that calls into question the correctness of a judge’s ruling, including a failure to recuse.” Rule 4(b)(1), *Rules for Judicial-Conduct and Judicial-Disability Proceedings*. Thus, to the extent Complainant challenges the length or terms of the sentence that the Subject Judge imposed upon her, the allegations do not constitute cognizable misconduct under the Judicial Conduct and Disability Act. This is similarly true of the Subject Judge’s alleged failure to recuse. All 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*.

Turning next to Complainant’s allegation the Subject Judge was “rude and sarcastic in the courtroom” and “sneered” at Complainant’s husband during his testimony, a review of the sentencing transcript reveals no support for a claim that the Subject Judge treated Complainant or her husband in a demonstrably egregious and hostile manner. *See* Rule 4(a)(2)(B), *Rules for Judicial-Conduct and Judicial-Disability Proceedings* (defining judicial misconduct to include “treating litigants, attorneys, judicial employees, or others in a demonstrably egregious and hostile manner”). For instance, the sentencing transcript reveals that the Subject Judge asked Complainant’s husband to state and spell his name and then permitted him to provide an uninterrupted statement in Complainant’s support. At the conclusion of the husband’s statement, the Subject Judge simply stated, “Thank you.” There is nothing whatsoever to suggest that an inappropriate interaction occurred. Similarly, neither the transcript of the plea colloquy nor the sentencing hearing reflects an

instance in which the Subject Judge's words were rude or sarcastic. Because these allegations are entirely lacking in support, they will be dismissed 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*.

Complainant's next series of allegations concern alleged bias on the part of the Subject Judge. Specifically, Complainant contends that the Subject Judge harbored a bias against her because: (1) Complainant committed illegal acts while working at an entity with "ties" to the Subject Judge; and (2) one of Complainant's victims is a political donor within the same political party to which the Subject Judge has "ties." Complainant provides no evidence to support her claims, but even assuming that the Subject Judge has the "ties" that Complainant describes, the record is entirely devoid of any indication that the Subject Judge acted with an inappropriate motive in Complainant's case. The Subject Judge's response confirms that he did not render decisions due to bias. Accordingly, these allegations also will be dismissed. 28 U.S.C. § 352(b)(1)(A)(iii); Rule 11(c)(1)(D), *Rules for Judicial-Conduct and Judicial-Disability Proceedings*.

Finally, Complainant alleges that the Subject Judge pre-determined the outcome of her sentencing hearing and then "leaked" information about the anticipated outcome to one of Complainant's victims. This allegation is based entirely upon Complainant's understanding that the victim decided to hold a "sentencing party" on the day of Complainant's sentencing hearing. The date of Complainant's sentencing hearing was

available on the public docket. A victim's decision to host a sentencing party on that date is neither credible nor even relevant evidence that the Subject Judge leaked anything.

Because Complainant's claim is based upon nothing more than speculation and personal belief, this allegation is 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

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ORDER

(Filed: November 19, 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: November 19, 2019