

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. No. 03-20-90037

IN RE: COMPLAINT OF JUDICIAL MISCONDUCT
OR DISABILITY

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

MEMORANDUM OPINION

(Filed: September 23, 2020)

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).

In 2013, Complainant filed a pro se patent suit against a government agency and a private corporation. The matter was assigned to the Subject Judge. The government agency moved to dismiss the complaint; the Subject Judge granted the motion.

Complainant sought reconsideration of the dismissal, which the Subject Judge denied.

The private corporation moved for judgment on the pleadings. The Subject Judge granted the motion. Complainant again sought reconsideration, which the Subject Judge denied.

Complainant appealed. On appeal, the Court of Appeals affirmed the judgment.

Complainant petitioned for certiorari in the United States Supreme Court and, in 2014, certiorari was denied.

Most recently, in 2019, Complainant filed an emergency motion seeking relief under Federal Rule of Civil Procedure 60(b). The Subject Judge denied the motion.

Complainant also moved for recusal, and the Subject Judge declined to recuse.

Complainant then filed a second recusal motion, which remains pending.

This complaint of judicial misconduct, which is accompanied by a lengthy statement in support, claims that the Subject Judge engaged in numerous forms of misconduct, including, *inter alia*, use of the judicial office to obtain special treatment for friends, treatment of a litigant in a demonstrably egregious and hostile manner, participation in a conspiracy and fraud upon the court, and issuance of “void” orders. To briefly summarize, the focus of the complaint is that the Subject Judge incorrectly dismissed the claims against the government agency because Complainant was attempting to sue it in its status as a “private commercial enterprise.” Complainant contends that the Subject Judge “intentionally misconstrued and misrepresented” Complainant’s pleadings in reaching this conclusion. Complainant further claims that the Subject Judge’s alleged error renders all other rulings in the proceeding “VOID,” violates the constitution and

Circuit precedent, and creates a Circuit split. Complainant also alleges that his recent Rule 60 motion is a “litmus test” and that the Subject Judge’s decision to deny it demonstrates that he is “engaged in the . . . conspiracy and ‘fraud upon the courts,’” “revealed sheer biasness [*sic*] and favoritism for the Defendants and Counsels over a *pro se* litigant,” and “demonstrates clear ‘judicial disability,’ incompetence, and continued failure to act in accordance with the law.” Finally, Complainant alleges that the Subject Judge wrongfully declined to recuse himself and posits that the recusal order “is also VOID for being produced by [the Subject Judge’s] own *fraud*.”

After careful review of the complaint and statement in support, it is apparent that the vast majority of Complainant’s allegations are intended to collaterally attack the Subject Judge’s decisions and rulings, including the order dismissing the claims against the government agency, the order denying Rule 60 relief, and the order denying the recusal motion. Such allegations are merits-related and therefore do not constitute cognizable misconduct. 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 previously appealed the Subject Judge’s order dismissing the government agency, and the judgment was affirmed. This administrative proceeding does not provide an additional opportunity to litigate the merits of that decision. “The misconduct procedure [under the Judicial Conduct and Disability Act] is not designed as a substitute for, or supplement to, appeals or motions for reconsideration. Nor is it designed

to provide an avenue for collateral attacks or other challenges to judges' rulings." *In re Memorandum of Decision of Judicial Conference Committee on Judicial Conduct and Disability*, 517 F.3d 558, 561 (U.S. Jud. Conf. 2008). Accordingly, Complainant's merits-related 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*.

To the extent they are not merits-related and non-cognizable, the allegations of the complaint lack evidentiary support. The record does not substantiate Complainant's myriad allegations of misconduct, including the allegations that the Subject Judge treated him in a demonstrably hostile and egregious manner, engaged in fraud and conspiracy, or is biased and incompetent. Apart from Complainant's fundamental disagreement with the merits of the Subject Judge's decisions and rulings, there is simply no record support for such claims. Accordingly, the complaint 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: September 23, 2020)

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 23, 2020