

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. No. 03-20-90038

IN RE: COMPLAINT OF JUDICIAL MISCONDUCT
OR DISABILITY

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

MEMORANDUM OPINION

(Filed: September 29, 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).

Complainant, a prisoner, filed a number of pro se civil rights complaints that were assigned to the Subject Judge. This complaint of judicial misconduct concerns three of those proceedings. In the complaint, Complainant alleges that the Subject Judge “has

repeatedly slandered [Complainant's] name in his orders and memorandums by calling [Complainant] a serial litigant, a frequent flyer [*sic*] in prison, and other inappropriate names and gestures that produced prejudice upon his name towards the public." In addition, among other things, Complainant disagrees with the Subject Judge's orders denying his recusal motions and suggests that the Subject Judge improperly influenced the jury in the civil rights case that went to trial. Complainant also contends that the Subject Judge "does not exercise sound judgment," refuses to adhere to Circuit precedent, and has "indicat[ed] that he has already spoke with opposing counsel on this case without [Complainant] present." Complainant further alleges that the Subject Judge "demonstrates a clear showing of bias towards me due to the fact that I am pro se and half black" because "he does not give [Complainant] the same amount of respect in his rulings or conduct to [Complainant] as he does the opposing counsel." Finally, Complainant suggests that it "seem[s] odd and conspiratorial" that the Subject Judge is presiding over "all" of his civil cases.

It is apparent that many of Complainant's allegations are intended to collaterally attack decisions and rulings rendered by the Subject Judge in the course of the civil rights proceedings, such as the orders denying recusal. 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."). "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*.

Complainant provides no substantiation for his remaining allegations of misconduct. For instance, although he accuses the Subject Judge of jury interference, improper ex parte communication, racial bias, and conspiracy, he provides no information about any facts that could support such claims.¹ A careful review of the record reveals no evidence to support Complainant's accusations.²

Moreover, Complainant's claim that the Subject Judge has "slandered" him is entirely baseless. For example, while the Subject Judge described Complainant in one

¹ To the extent Complainant implies that a "conspiracy" exists because his cases were assigned to the Subject Judge, it is noted that case assignments are not typically made by a particular judge, but by the Clerk of the District Court. Because the Clerk of the District Court is not a federal judge and therefore is not subject to 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*, allegations of misconduct that implicate the Clerk will not be addressed in this opinion.

² Complainant raised several of these claims in his most recent recusal motion, which the Subject Judge denied. Among other things, the Subject Judge observed that Complainant's "jury fixing" claim was based solely on "wildly inaccurate speculation." As already noted, a decision rendered on a recusal motion is merits-related and does not, without more, constitute cognizable misconduct. *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*.

opinion as “a frequent civil rights litigant in this Court” and in another opinion as a litigant who has “sued . . . in this Court dozens of times,” the descriptions are factually accurate and relevant to Complainant’s underlying claims that prison officials retaliated against him based on the lawsuits he filed against them. Moreover, even if the Subject Judge’s phrasing caused Complainant personal offense, “expressions of impatience, dissatisfaction, annoyance, and even anger” do not establish bias or partiality unless they reveal such a high degree of antagonism or favoritism as to make fair judgment impossible. *See Liteky v. United States*, 510 U.S. 540, 555 (1994); *see also United States v. Wecht*, 484 F.3d 194, 220 (3d Cir. 2007) (same).

The Subject Judge’s words are not objectively offensive and do not satisfy the *Liteky* standard. A review of the Subject Judge’s orders does not reveal use of language displaying antagonism or favoritism or rising to the level of demonstrably egregious and hostile treatment constituting judicial misconduct under Rule 4(a)(2)(B), *Rules for Judicial-Conduct and Judicial-Disability Proceedings*. Accordingly, to the extent the allegations of the complaint are not merits-related, they are 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)(i), (ii), and (iii).

s/ D. Brooks Smith

Chief Judge

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ORDER

(Filed: September 29, 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)(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: September 29, 2020