

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. No. 03-17-90001

IN RE: COMPLAINT OF JUDICIAL MISCONDUCT
OR DISABILITY

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

MEMORANDUM OPINION

(Filed: May 11, 2017)

PRESENT: SMITH, *Chief Judge*.

This is a complaint filed under the Judicial Conduct and Disability Act, 28 U.S.C. §§ 351-64, against a United States Magistrate 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 state prisoner, filed two pro se civil rights complaints. In the first complaint, Complainant presented claims under the First Amendment and related statutes challenging prison restrictions on the rights of Muslim inmates to attend certain holiday

services. The parties consented to proceed before the Subject Judge, who dismissed the complaint for failure to state a claim upon which relief can be granted. Complainant appealed, and the Court of Appeals summarily affirmed the judgment. In the second complaint, Complainant presented claims under the Eighth and Fourteenth Amendments, alleging excessive force and related misconduct on the part of prison officials. The Subject Judge issued a report and recommendation recommending that the complaint be dismissed in part. The presiding District Judge, who is not named as a Subject Judge of this complaint, adopted the recommendation. The remaining claims are pending.

In this complaint of judicial misconduct, Complainant argues that the Subject Judge improperly dismissed the first civil rights proceeding and improperly denied several of his motions in the second civil rights proceeding. These allegations are merits-related. “An allegation that calls into question the correctness of a judge’s ruling, . . . without more, is merits-related.” Rule 3(h)(3)(A), *Rules for Judicial-Conduct and Judicial-Disability Proceedings*. Merits-related allegations are subject to dismissal because they do not constitute cognizable misconduct under the Judicial Conduct and Disability Act. *See* 28 U.S.C. § 352(b)(1)(A)(ii); Rules 3(h)(3)(A), 11(c)(1)(B), *Rules for Judicial-Conduct and Judicial-Disability Proceedings*.

Next, Complainant alleges that the Subject Judge engaged in “improper conduct,” including “conflict of interest, prejudice, bias, failure to recuse.”¹ Apart from offering merits-related allegations to support these claims of bias, Complainant argues that, during

¹ A failure to recuse, without more, is merits-related. *See* Rule 3(h)(3)(A), *Rules for Judicial-Conduct and Judicial-Disability Proceedings*.

a status hearing in the second civil rights proceeding, the Subject Judge engaged in “illogical methods” and “overly dramatic bordering on hysterical tactics.” Complainant alleges that the Subject Judge treated him rudely by “hollering/screaming” and being “disrespectful and abrasive” and by “constantly and continuously litigating on behalf of the defendants.”

A review of the transcript of the status hearing reveals that these allegations are baseless. The Subject Judge remained calm and professional for the duration of the brief status hearing and her demeanor during that hearing does not lend support to any claims of “conflict of interest, prejudice, bias, failure to recuse.” Because Complainant has provided no evidence of improper conduct on the part of the Subject Judge, these allegations 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, the 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: May 11, 2017)

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: May 11, 2017