

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. No. 03-17-90079

IN RE: COMPLAINT OF JUDICIAL MISCONDUCT
OR DISABILITY

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

MEMORANDUM OPINION

(Filed: May 18, 2018)

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 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 2014, Complainant, a state prisoner, filed a pro se civil rights complaint in which he alleged, *inter alia*, that a number of prison officials retaliated against him in response to

his filing grievances and lawsuits against them. The matter initially was assigned to a District Judge who is not a subject of this complaint. In 2017, after a lengthy pre-trial period, the matter was re-assigned to the Subject Judge. The matter proceeded to a two-day trial. The trial consisted exclusively of the Complainant's case; the defense did not present its own witnesses. Complainant was permitted to conduct direct examination and re-direct examination of all witnesses that he called. Ultimately, the jury returned a verdict in Complainant's favor as to one claim against one defendant and awarded Complainant compensatory damages. The Subject Judge entered judgment accordingly. Complainant appealed, and the appeal is pending.

In this complaint of judicial misconduct, Complainant alleges that the Subject Judge demonstrated "obvious bias," engaged in "ill treatment" of Complainant, and treated Complainant in "a demonstrably egregious and hostile manner." Specifically, Complainant alleges that the Subject Judge refused to acknowledge an earlier favorable ruling rendered by a Magistrate Judge and unfairly barred Complainant from discussing that issue at trial, refused to allow Complainant adequate time to address a number of defense motions filed on the eve of trial, held the parties to a strict trial schedule that did not permit Complainant adequate time to prepare, and engaged in "repeated scolding" of Complainant. Complainant further alleges that, during trial, the Subject Judge repeatedly interrupted him and berated him in front of the jury. Complainant specifies that "all of the facts herein can be supported by the official record of the two day trial."

As an initial matter, Complainant correctly acknowledges that allegations calling into question the merits of specific judicial rulings are not cognizable as judicial misconduct. *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*. Complainant submits that he has identified specific rulings only for the purpose of illustrating his allegations of “obvious bias and ill treatment” and not for the purpose of calling into question the merits of those rulings.

Moreover, Complainant specifically stated at trial that he intended to appeal certain of the Subject Judge’s rulings at trial, and it is presumed that he will do so when his pending appeal is briefed. Accordingly, no merits-related allegations will be addressed in this opinion. Rather, this opinion is limited to consideration of whether Complainant has identified conduct on the part of the Subject Judge constituting “conduct prejudicial to the effective and expeditious administration of the business of the courts,” including “treating litigants . . . in a demonstrably egregious and hostile manner.” Rule 3(h)(1), *Rules for Judicial-Conduct and Judicial-Disability Proceedings*.

Upon careful review of the record, including the transcript of the two-day jury trial, it is apparent that Complainant’s claims of bias and egregious and hostile treatment are unfounded. The record reveals that, during the course of the trial, the Subject Judge interjected primarily for the purpose of maintaining courtroom order and to rule upon objections. The Subject Judge’s statements on the record include, among other things,

reminders to Complainant to refrain from including his own testimony and personal views within his questions to witnesses, instructions to focus questioning on topics pertaining to the pending claims, and cautions against interrupting witness answers. The transcripts reveal no instance in which the Subject Judge's comments were disrespectful or inappropriate.

To the extent that Complainant alleges that the Subject Judge became frustrated with him during trial, it must be noted that “expressions of impatience, dissatisfaction, annoyance, and even anger” arising during ordinary efforts at courtroom administration 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 record reveals no evidence of antagonism, favoritism, or any behavior that could rise to the level of demonstrably egregious and hostile treatment constituting judicial misconduct under Rule 3(h)(1)(D), *Rules for Judicial-Conduct and Judicial-Disability Proceedings*. Accordingly, Complainant's 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, 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: May 18, 2018)

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: May 18, 2018