

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. No. 03-19-90018

IN RE: COMPLAINT OF JUDICIAL MISCONDUCT
OR DISABILITY

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

MEMORANDUM OPINION

(Filed: April 29, 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 filed a civil rights complaint in which he claimed that he suffered malicious prosecution. The matter proceeded to a three day bench trial before the Subject Judge. The Subject Judge issued a memorandum detailing his findings and conclusions,

and awarded judgment to the defendant. Although the Subject Judge granted an extension of time to appeal, Complainant did not timely appeal.

In this complaint of judicial misconduct, Complainant expresses disagreement with the Subject Judge's oversight of the civil rights proceeding. Among other things, Complainant alleges that the Subject Judge "did not take all filed motions under consideration," disputes the Subject Judge's credibility determinations, and alleges that "[b]y the facts, evidence, footages, defendants [were] guilt . . . and [the Subject Judge] ruled in ordered judgment thoughts that were untruly honest in favor of defendants." Complainant further alleges that he suffered damage while he was imprisoned for seven days because he was without access to medication, and contends that the Subject Judge made a false statement during a hearing, by stating that Complainant "would [have] had to be half dying to get prescribed medications in jail system." Finally, Complainant alleges that he has been deprived of bail money and of the award of funds to which Complainant believes he is entitled.

It is clear that Complainant contests the Subject Judge's judicial rulings, including the entry of judgment against him. Such allegations do not constitute cognizable misconduct under the Judicial Conduct and Disability Act. 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."). Because they are non-cognizable, Complainant's merits-related

allegations will be dismissed. *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's sole non-merits-related allegation is his claim that the subject judge made a false statement by indicating that it would be nearly impossible to be prescribed medication while Complainant was in jail. Complainant contends this is false because, while in jail, he observed others being provided with medication. Even if the Subject Judge's statement was factually incorrect, this single statement does not rise to the level of "conduct prejudicial to the effective and expeditious administration of the business of the courts." Rule 4(a), *Rules for Judicial-Conduct and Judicial-Disability Proceedings*. Importantly, there is no indication that the Subject Judge intended to mislead Complainant in any respect. Accordingly, Complainant's allegation is subject to dismissal. 28 U.S.C. § 352(b)(1)(A)(iii); Rule 11(c)(1)(A), *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

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. No. 03-19-90018

IN RE: COMPLAINT OF JUDICIAL MISCONDUCT
OR DISABILITY

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

ORDER

(Filed: April 29, 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: April 29, 2019