

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. No. 03-20-90005

IN RE: COMPLAINT OF JUDICIAL MISCONDUCT
OR DISABILITY

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

MEMORANDUM OPINION

(Filed: March 31, 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 filed a pro se age discrimination complaint against her former employer and others. The Subject Judge dismissed the complaint, but permitted Complainant leave to amend. Complainant filed an amended complaint and also filed

several motions, including a motion for a default judgment and a motion seeking the Subject Judge’s recusal. The Subject Judge denied the motions. Recently, Complainant filed a second recusal motion, which remains pending. The discrimination matter is ongoing.

In this complaint of judicial misconduct, Complainant alleges that her case before the Subject Judge “is being sabotaged” and “presents bias, special treatment and []partiality for the defendants.”¹ Specifically, among other things, Complainant alleges that she received a purported “threat” from the Subject Judge, in the form of a court order correcting the caption in her case. She alleges that “[i]t is illegal” to change the case caption during the pendency of the proceeding. In addition, Complainant claims that the Subject Judge erroneously declined to enter a default judgment in her favor. Finally, Complainant alleges that she moved for the Subject Judge’s recusal because “[she] knew he would not be fair and impartial” due to his representation (while in private practice, prior to taking the bench) of the law firm that represents the defendants in her case.

It is apparent that Complainant’s allegations reflect her dissatisfaction with the merits of judicial decisions and rulings, including the decisions not to recuse and not to enter a default judgment. Allegations disputing the merits of judicial rulings do not,

¹ In addition to her claims concerning the Subject Judge, Complainant presents allegations of misconduct concerning the Clerk of the District Court and a private attorney. Such individuals are not federal judges and therefore are 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*. Accordingly, such allegations will not be addressed in this opinion.

however, constitute cognizable misconduct under the Judicial Conduct and Disability Act. “Cognizable misconduct does not include an allegation that calls into question the correctness of a judge’s ruling, including a failure to recuse.” Rule 4(b)(1), *Rules for Judicial-Conduct and Judicial-Disability Proceedings*.

The “misconduct procedure [under the 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 non-cognizable 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 Complainant’s allegations are not merits-related, they are baseless. The language of the Subject Judge’s order modifying the case caption demonstrates that the Subject Judge did not make a “threat.” The order states simply: “In order to correctly identify the Defendants, the caption of the action shall be changed by the Clerk of the Court to read: [listing defendants].” Regarding the Subject Judge’s prior representation of a law firm that is participating in Complainant’s case, the Subject Judge confirmed in the order denying recusal that “[he] never represented any party to this litigation and . . . none of the lawyers with whom [he] previously practiced law served as a lawyer in this matter during [his] association with them.” Complainant offers no evidence to the contrary. Without more, the alleged past professional relationship with the law firm does not give

rise to a circumstance in which the Subject Judge’s impartiality might reasonably be questioned. *See, e.g.*, Canon 3(C)(1)(b), Code of Conduct for United States Judges (requiring disqualification where, *inter alia*, “the judge served as a lawyer in the matter in controversy, or a lawyer with whom the judge previously practiced law served during such association as a lawyer concerning the matter, or the judge or lawyer has been a material witness”).²

A review of the record reveals no basis for a conclusion that the Subject Judge is biased against Complainant. Accordingly, Complainant’s remaining 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)(i), (ii), and (iii).

s/ D. Brooks Smith
Chief Judge

²The Code of Conduct for United States Judges is designed to provide guidance to judges but is not a set of disciplinary rules. “Ultimately, the responsibility for determining what constitutes misconduct under the statute is the province of the judicial council of the circuit subject to such review and limitations as are ordained by the statute and by these Rules.” Commentary on Rule 3, *Rules for Judicial-Conduct and Judicial-Disability Proceedings*.

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ORDER

(Filed: March 31, 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: March 31, 2020