

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. No. 03-21-90014

IN RE: COMPLAINT OF JUDICIAL MISCONDUCT
OR DISABILITY

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

MEMORANDUM OPINION

(Filed: June 30, 2021)

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, it 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 is a pro se plaintiff in a civil rights action before the Subject Judge. In that proceeding, Complainant moved several times for the Subject Judge’s recusal, arguing bias and an appearance of impropriety because one of the numerous defendants in

the civil rights action is allegedly the Subject Judge's "former boss" and "someone that [the Subject Judge] would be very loyal to," and also because the Subject Judge might be called as a witness to testify in one of Complainant's other civil actions. The Subject Judge declined to recuse, concluding that Complainant failed to show that the Subject Judge's impartiality may reasonably be questioned or that he has a personal bias or prejudice against Complainant. The civil rights action remains pending.

In this complaint of judicial misconduct, Complainant repeats the allegations of his recusal motions. In addition, Complainant alleges that the Subject Judge is improperly "allowing an attorney to practice law and file papers before his court" even though the attorney allegedly lacks adequate professional liability insurance.

Because the majority of Complainant's allegations simply repeat his recusal motions, the allegations are merits-related and do not constitute cognizable misconduct. *See* 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 Subject Judge considered Complainant's recusal allegations and denied them for lack of merit; a substantive challenge to that decision cannot be addressed in this administrative proceeding. Rule 4(b)(1), *Rules for Judicial-Conduct and Judicial-Disability Proceedings*. "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). Complainant's merits-related allegations are therefore 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*.

Moreover, Complainant's allegations lack evidentiary support. Complainant relies upon a public disclosure identifying the defendant in question as having appointed the Subject Judge to two professional positions more than a decade ago, many years before the Subject Judge took the bench. Such a professional relationship does not automatically give rise to a circumstance in which the Subject Judges' impartiality might reasonably be questioned. *See, e.g.*, Canon 3(C)(1)(d), Code of Conduct for United States Judges (requiring disqualification where "the judge or the judge's spouse, or a person related to either within the third degree of relationship" is a party to the proceeding).¹ Similarly, Complainant does not put forth any evidence demonstrating a reasonable likelihood that the Subject Judge will be called as a witness in any case involving Complainant. Accordingly, the allegations are also subject to dismissal as frivolous and unsupported by evidence that would raise an inference that misconduct has occurred. 28 U.S.C.

¹The 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*.

§ 352(b)(1)(A)(iii); Rule 11(c)(1)(B)–(D), *Rules for Judicial-Conduct and Judicial-Disability Proceedings*.

Finally, the allegations concerning the attorney who is allegedly uninsured do not implicate misconduct on the part of the Subject Judge.² Complainant presented these allegations in a motion to disqualify the attorney, which the Subject Judge denied as meritless. Moreover, Complainant points to nothing demonstrating that the Subject Judge has an obligation to police the insurance status of the attorneys practicing before him. The allegations are therefore subject to dismissal as merits-related, frivolous, and unsupported. 28 U.S.C. § 352(b)(1)(A)(i), (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)(ii) and (iii).

s/ D. Brooks Smith

Chief Judge

² The attorney is not a federal judge and therefore is not subject to the Judicial Conduct and Disability Act. *See* 28 U.S.C. § 351(d); Rule 4, *Rules for Judicial-Conduct and Judicial-Disability Proceedings*. To the extent Complainant alleges inappropriate behavior on the part of the attorney, the allegations will not be addressed in this opinion. *See* 28 U.S.C. §§ 351, 352(b)(1)(A)(i).

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ORDER

(Filed: June 30, 2021)

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: June 30, 2021