

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. No. 03-21-90038

IN RE: COMPLAINT OF JUDICIAL MISCONDUCT
OR DISABILITY

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

MEMORANDUM OPINION

(Filed: September 13, 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 Magistrate Judge (“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 prisoner, filed a pro se civil rights complaint against prison officials. The matter was referred to the Subject Judge, who screened the complaint and issued a report and recommendation (R&R) recommending that Complainant should be

granted leave to amend one claim. Over Complainant's objections, the District Court adopted the R&R. Complainant then filed an amended complaint as directed. The Subject Judge issued a second R&R concluding that the amended complaint failed to state a claim and should be dismissed with prejudice. The matter remains pending.

In this complaint of judicial misconduct, Complainant alleges that the Subject Judge's first R&R reflects prejudice against him because it states that Complainant "has and acts out on auditory hallucinations." Complainant also suspects the Subject Judge once worked at the prison where Complainant is incarcerated and alleges that "[i]f this is true [the Subject Judge] may be using the judge's office to obtain special treatment for friends, or relatives."

Although Complainant is correct that the first R&R includes an observation by the Subject Judge that Complainant suffers from auditory hallucinations, this statement arises in discussing the merits of the portion of the complaint that is based upon hearing taunts. The statement is written in neutral, descriptive terms and does not demonstrate that the Subject Judge is biased against Complainant. As to Complainant's suspicion that the Subject Judge was once employed by the prison where Complainant is incarcerated, it is noted that the Subject Judge began employment with the District Court in the late 1980s and has been on the bench for nearly three decades. Accordingly, even if the allegation is true, the alleged employment ended so long in the past that it does not 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 Accordingly, Complainant’s allegations of bias are subject to dismissal because, even if true, they do not constitute conduct prejudicial to the effective and expeditious administration of the business of the courts, and because they are 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)(A), (D), *Rules for Judicial-Conduct and Judicial-Disability Proceedings*.

Finally, to the extent Complainant’s allegations are intended to collaterally attack the merits of the Subject Judge’s R&R, such allegations are merits-related and therefore do not constitute cognizable misconduct. 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. . . .”). Merits-related 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*.

Based on the foregoing, this complaint will be dismissed pursuant to 28 U.S.C. § 352(b)(1)(A)(ii) and (iii).

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*.

s/ D. Brooks Smith
Chief Judge

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ORDER

(Filed: September 13, 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: September 13, 2021