

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. No. 03-13-90042

IN RE: COMPLAINT OF JUDICIAL MISCONDUCT
OR DISABILITY

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

MEMORANDUM OPINION

(Filed: September 19, 2013)

PRESENT: McKEE, 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, a former military pilot and frequent pro se plaintiff, filed a civil rights complaint in November 2010. The matter was assigned to the Subject Judge.¹ In October 2011, the Subject Judge dismissed the complaint as frivolous. Over the course of the next year, Complainant filed four separate post-judgment motions requesting to reopen the case, each of which the Subject Judge denied. In September 2012, the Subject Judge entered an order prohibiting further filings in the case.

Complainant filed this judicial misconduct complaint in May 2013. In large part, the complaint raises collateral challenges the Subject Judge's decision to dismiss Complainant's civil rights action. Among other things, Complainant alleges, "[t]his Defendant refused to address any allegation in this case. . . . This Defendant refused me to gain any argument, to know what further evidence that needs to be submitted. This Defendant refused to honor a Motion of Default. This Defendant refused to address an Ex

¹ In his misconduct complaint, Complainant identifies the docket number of a different civil action that he filed in March 2012. That matter was assigned to a District Judge who Complainant did not name as a Subject Judge. Because the misconduct complaint so clearly identifies the Subject Judge alone, for purposes of this opinion, I have assumed that Complainant mistakenly identified the March 2012 action, and intended this complaint to concern the November 2010 action that was assigned to the Subject Judge. In an abundance of caution, I also have reviewed the record of the March 2012 proceeding pursuant to Rule 5, Rules for Judicial-Conduct and Judicial-Disability Proceedings. That matter provides no reasonable grounds for inquiry into whether misconduct occurred. I therefore decline to identify any misconduct complaint with respect to that proceeding.

Parte complaint. . . . This Defendant refuse[s] to stand down on this case, after explaining his corruption and perversion. This Defendant refuses me a Jury.”²

These are merits-related disputes, and are therefore not cognizable under the Judicial Conduct and Disability Act. See 28 U.S.C. § 352(b)(1)(A)(ii); Rule 11(c)(1)(B), 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). The allegations are dismissed. See 28 U.S.C. § 352(b)(1)(A)(ii); Rule 11(c)(1)(B), Rules for Judicial-Conduct and Judicial-Disability Proceedings.

To the extent Complaint attempts to raise any non-merits-related claims, he merely puts forth vague and disjointed statements that are entirely lacking in meaningful explanation. For instance, Complainant states, “[t]his Defendant has acted with Judicial Misconduct, like taking a personal dislike to this case, who obstructed my use of our Courts, in violation of my Constitution[al] Rights.” Complainant further alleges, [t]his Defendant discriminated against me, while forced to be a Pro-Se litigant, a non-minority and over a fathers issue, involving the kidnapping of my 3 year old under the table, leaving no paper trail.”

² Complainant did not file a “Motion of Default” in the proceeding before the Subject Judge. Complainant did file such a motion in the action referenced in footnote 1, and the presiding District Judge dismissed the motion as moot.

Apart from Complainant's disagreement with the Subject Judge's decisions and rulings in his civil rights action, Complainant offers nothing to substantiate his accusations. The record lends no support whatsoever. Accordingly, Complainant's remaining claims are dismissed as frivolous and unsupported by evidence that would raise an inference that misconduct occurred. See 28 U.S.C. § 352(b)(1)(A)(iii); Rule 11(c)(1)(D), Rules for Judicial-Conduct and Judicial-Disability Proceedings.

Thus, for all of the foregoing reasons, this complaint is dismissed pursuant to 28 U.S.C. §§ 352(b)(1)(A)(ii) and (iii).

In the past, Complainant has filed other complaints under the Judicial Conduct and Disability Act, which also were dismissed as merits-related, frivolous, and unsupported by evidence that would raise an inference that misconduct occurred. See J.C. Nos. 03-10-90112; 03-10-90114; 03-10-90115; 03-10-90116; 03-10-90117; 03-10-90118; 03-12-90021; 03-12-90022; 03-12-90023; 03-12-90024; 03-12-90025; 03-12-90026; 03-12-90027; 03-12-90028; 03-12-90029; 03-12-90030; 03-12-90031; 03-12-90032; 03-12-90033; 03-12-90034. Complainant expressly was cautioned that filing additional improper complaints could result in the imposition of restrictions on his ability to file new complaints. See J.C. Nos. 03-12-90021; 03-12-90022; 03-12-90023; 03-12-90024; 03-12-90025; 03-12-90026; 03-12-90027; 03-12-90028; 03-12-90029; 03-12-90030; 03-12-90031; 03-12-90032; 03-12-90033; 03-12-90034. Complainant nonetheless filed this complaint, which is, once again, merits-related, frivolous, and unsupported by sufficient evidence.

Accordingly, a copy of this Memorandum Opinion and Order will be transmitted to the Judicial Council for consideration of whether to issue an order to show cause why Complainant should not be enjoined from filing further complaints under the Judicial Conduct and Disability Act. See Rule 10(a), Rules for Judicial-Conduct and Judicial-Disability Proceedings.

/s/Theodore A. McKee
Chief Judge

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ORDER

(Filed: September 19, 2013)

PRESENT: McKEE, 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 clerk of the court of appeals within **35 days** of the date on the clerk's letter informing the parties of the chief judge's order.

18(b) Form. The petition should be in letter form, addressed to the clerk of the court of appeals, 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 Clerk’s Office of the Court of Appeals for the Third Circuit and on the Court of Appeals’ internet site, www.ca3.uscourts.gov.

/s/ Theodore A. McKee
Chief Judge

Dated: September 19, 2013