

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. Nos. 03-13-90044, 03-13-90045

IN RE: COMPLAINT OF JUDICIAL MISCONDUCT
OR DISABILITY

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

MEMORANDUM OPINION

(Filed: September 27, 2013)

PRESENT: McKEE, Chief Judge.

This is a complaint filed under the Judicial Conduct and Disability Act, 28 U.S.C. §§ 351-64, naming two United States District Judges (hereinafter “Subject Judge I” and “Subject Judge II”). 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). 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).

As a preliminary matter, Complainant makes allegations concerning individuals and entities who are not subject to the Judicial Conduct and Disability Act; e.g., members of the Federal Bureau of Investigation, the United States Marshals Service, a Supreme Court Justice, and a former Solicitor General, among others. See 28 U.S.C. §§ 351, 352(b)(1)(A)(i); Rule 4, Rules for Judicial-Conduct and Judicial-Disability Proceedings. Accordingly, these allegations will not be addressed in this opinion.

Although the complaint is largely incoherent, Complainant appears to complain that Subject Judge I improperly dismissed a civil action he filed over a decade ago. In support of this contention, he relies on the fact that his unsuccessful petition for review was docketed in the United States Supreme Court. In addition, Complainant maintains that Subject Judge I should have recused herself and "honor[ed]" two letters filed as exhibits. These allegations are plainly merits-related and are not cognizable under the Judicial Conduct and Disability Act. See 28 U.S.C. § 352(b)(1)(A)(ii) (chief judge may dismiss a complaint if he or she finds that it is directly related to the merits of a decision or procedural ruling); Rule 3(h)(3)(A), Rules for Judicial-Conduct and Judicial-Disability Proceedings ("[a]n allegation that calls into question the correctness of a judge's ruling, including a failure to recuse, without more, is merits-related"); Rule 11(c)(1)(B), Rules for

Judicial-Conduct and Judicial-Disability Proceedings (a complaint must be dismissed in whole or in part to the extent that the chief judge concludes that the complaint is directly related to the merits of a decision or procedural ruling).

Complainant further contends that the Subject Judge “conspired with the U.S. Marshal[s] Service not to interview [a state representative] plus his [aides]” Complainant also alleges that the Subject Judge conspired with various federal officials and is part of a “symbiotic relationship between corporations and U.S. Government Judges.” Although not entirely clear, these conspiracy allegations appear to relate to a former complaint of judicial misconduct that Complainant filed against Subject Judge I and the subsequent investigation by the United States Marshals service of an inappropriate statement made therein. See J.C. No. 01-08.

As stated in the opinion dismissing J.C. No. 01-08 as frivolous and merits-related, former Chief Judge Becker – with Subject Judge I’s permission – properly brought a disturbing statement made by Complainant in his 2001 complaint concerning his empathy for Mr. Timothy McVeigh to the attention of the United States Marshals Service.¹ In response to a recent FOIA request, Complainant obtained what appears to be a redacted copy of a U.S. Marshals “Report of Investigation” concerning the investigation of his inappropriate communication. Complainant’s current complaint attaches a portion of this

¹ In his prior complaint, Complainant stated, “I also can kill tyrants and defend the United States Constitution til the death of me!” One of the attachments to his current complaint is a letter from an individual claiming that Timothy McVeigh was framed and that there was a cover-up of the true perpetrators of the bombing. Handwritten notes on the letter suggest that Complainant shares these views.

2001 “Report of Investigation”, which includes a statement that someone (the name is redacted) did not desire a state representative to be interviewed. The “Report” also indicates that an unidentified person “expressed concerns” about information a state representative provided Complainant about some unidentified document. Even assuming *arguendo* that the “Report” in fact concerns an interview of Subject Judge I, it does not support Complainant’s allegations concerning the existence of a conspiracy or any type of misconduct on the part of Subject Judge I. Rather, the “Report” reflects that the unnamed individual (name redacted) did “not feel threatened at this time” and wished no further action, including the interviewing of the state representative. Accordingly, Complainant’s allegations are dismissed as frivolous and unsupported by any 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.

With respect to Subject Judge II, Complainant’s allegations are similarly opaque. However, based on Complainant’s notes on an order issued by Subject Judge II, it appears that Complainant is dissatisfied with Subject Judge II’s ruling in a different civil action.² As discussed above, merits-related allegations are not cognizable in these proceedings. See 28 U.S.C. § 352(b)(1)(A)(ii); Rules 3(h)(3)(A), 11(c)(1)(B), Rules for Judicial-Conduct and Judicial-Disability Proceedings.

For the foregoing reasons, the complaint is dismissed pursuant to 28 U.S.C.

² According to the docket, Complainant is not a party to the civil suit in question.

§ 352(b)(1)(A)(i), (ii), and (iii).

/s/ Theodore A. McKee
Chief Judge

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ORDER

(Filed: September 27, 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)(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 of the Court of Appeals within **35 days** of the date on the letter informing the parties of the Chief Judge's order.

18(b) Form. The petition should be in letter form, addressed to the Circuit Executive 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 Office of the Circuit Executive 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 27, 2013