

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. No. 03-13-90051

IN RE: COMPLAINT OF JUDICIAL MISCONDUCT
OR DISABILITY

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

MEMORANDUM OPINION

(Filed: October 10, 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 was a pro se plaintiff in a civil rights matter concerning an allegedly falsified restraining order. In May 2012, the Subject Judge dismissed the complaint. On

appeal, the Court of Appeals disagreed with certain legal conclusions in the dismissal order. It therefore affirmed the dismissal in part and vacated it in part and remanded the matter for further proceedings.

On remand, the parties filed cross-motions for summary judgment. While the motions were pending, Complainant continued to file motions, including a motion to amend, a motion for reconsideration, and a motion to consolidate. At the request of the defense, the Subject Judge issued an order limiting Complainant's ability to file new documents pending a decision on the dispositive motions. The order directed that any new filings by Complainant must first be authorized by the Subject Judge.¹ Complainant filed an appeal from that order, which is pending. Ultimately, in August 2013, the Subject Judge granted summary judgment to the defendants and closed the case. Complainant's appeal from the final judgment is pending.

Complainant filed this complaint of judicial misconduct in July 2013, shortly before the Subject Judge rendered judgment and closed the case. In it, Complainant alleges that "[i]t seems that the Judge has sided with the [defendants] on this matter and is letting the [defendants] disregard some of the rules and also not let any discovery or testimony take place." Specifically, Complainant states, "I feel that because I had the defendants cornered [the defendants] somehow got the Judge to order the court clerk not to accept any more of my motions, pleadings, letters, or documents. . . ." Complainant

¹ The docket reflects that, after issuing the order, the Subject Judge granted Complainant authorization to file a motion for sanctions.

concludes his misconduct complaint by noting that “I feel bad that I have to make a complaint against a lifelong family friend,” but that, due to the Subject Judge’s order limiting his ability to file documents with the court, “the doors of the Judicial System have been closed and bolted shut. . . .”

Complainant’s allegations are largely merits-related. Clearly, Complainant disagrees with a number of the Subject Judge’s decisions and rulings – most particularly, the order limiting Complainant’s ability to file additional documents pending the Subject Judge’s decision on the dispositive motions before her. “An allegation that calls into question the correctness of a judge’s ruling . . . is merits-related.” Rule 3(h)(3)(A), Rules for Judicial-Conduct and Judicial-Disability Proceedings. Merits-related allegations are not cognizable as judicial misconduct. 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.

Moreover, Complainant’s disagreement with the Subject Judge’s order limiting his ability to file documents is directly before the Court of Appeals in his pending appeal. 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). This administrative proceeding is not a proper forum in which to address Complainant’s merits-related claims. Accordingly, Complainant’s merits-related allegations are dismissed. 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

Apart from his disagreement with the merits of her decisions and rulings, Complainant offers nothing whatsoever to substantiate his claims that the Subject Judge colluded with or is biased in favor of the defendants. Complainant's "feeling" that there may be something amiss does not give rise to a reasonable inference that judicial misconduct may have occurred. The record reflects no evidence of impropriety. Accordingly, to the extent they are not merits-related, Complaint's allegations are dismissed 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.

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

/s/ Theodore A. McKee
Chief Judge

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ORDER

(Filed: October 10, 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 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: October 10, 2013