

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. Nos. 03-13-90076, 03-13-90077

IN RE: COMPLAINT OF JUDICIAL MISCONDUCT
OR DISABILITY

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

MEMORANDUM OPINION

(Filed: February 11, 2014)

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 (“Subject Judge I”) and a United States Magistrate Judge (“Subject Judge II”). For the reasons discussed below, the complaint will be dismissed.¹

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

¹ To the extent Complainant’s allegations concern individuals not covered by the Judicial Conduct and Disability Act, including an Assistant United States Attorney, the allegations against them will not be addressed in this opinion. See 28 U.S.C. §§ 351, 352(b)(1)(A)(i); Rule 4, Rules for Judicial-Conduct and Judicial-Disability Proceedings

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).

In July 2011, Complainant, a federal prisoner, filed a civil complaint alleging that prison officials were deliberately indifferent to his serious medical needs. Subject Judges I and II oversaw the proceeding.² In August 2013, Subject Judge II issued a Report and Recommendation, in which she recommended granting the defendants' motion for summary judgment and dismissing the case in its entirety. In October 2013, Subject Judge I adopted the Report and Recommendation and dismissed the complaint. Complainant appealed; the appeal remains pending.

In this complaint of judicial misconduct, Complainant alleges that “both Judges are intellectually dishonest. That both Judges have abrogated Supreme Court precedent, . . . Court of Appeals precedent and the Rule of Law period. They have granted a Summary Judgment motion when, as a matter of law, one was not warranted. The Judicial Misconduct is egregious misconduct that is very bad behavior.”

Complainant provides a detailed discussion of the merits of the substantive claims in his civil proceeding. He also includes a number of documents relevant to the substantive claims, including copies of his prison medical records. Complainant alleges that Subject Judges I and II failed to consider or discuss some of the issues he raised in his complaint. Complainant states that this alleged failure to fully and adequately address his

² The case was referred to Subject Judge II in December 2012. Prior to that, two other Magistrate Judges participated in the case; they are not named as Subject Judges in the complaint.

complaint “is highly prejudicial to me” and amounts to conduct prejudicial to the effective and expeditious administration of the business of the courts. Based upon these allegations, Complainant requests that a special investigator be appointed and that his complaint be transferred to a different venue.

It is apparent that the complaint largely reflects Complainant’s disagreement with the Subject Judge’s decisions and rulings – particularly the decision to grant summary judgment to the defendants and to dismiss his complaint. These merits-related claims are not appropriately raised in a judicial misconduct proceeding. “An allegation that calls into question the correctness of a judge’s ruling, including a failure to recuse, without more, is merits-related.” Rule 3(h)(3)(A), Rules for Judicial-Conduct and Judicial-Disability Proceedings.

Indeed, Complainant is currently pursuing an appeal from the judgment entered in his case. 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). Because they are merits-related, these allegations are not cognizable in this proceeding and 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.

In addition, Complainant submitted an “addendum” in support of his complaint, in which he alleges that Subject Judge I filed a “falsified document.” Specifically, Complainant alleges that, in the October 2013 summary judgment order, Subject Judge I referred by name to a Magistrate Judge who was no longer participating in Complainant’s case rather than to Subject Judge II, who actually had authored the Report and Recommendation. Complainant alleges that “[t]he said Order is a falsified document that has no force and effect under the Law. This is fraud, false statements, and the falsification of a Federal Court document.”

There is no evidence whatsoever that the erroneous references to the different Magistrate Judge (who participated earlier in the proceeding) are anything more than a mistake on the part of Subject Judge I. The name of the correct author of the Report and Recommendation is readily apparent on the docket, and it does not appear that the error caused any prejudice to Complainant. There is no indication of fraud or intentional wrongdoing of any sort. These allegations are therefore 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.

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

s/Theodore A. McKee
Chief Judge

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ORDER

(Filed: February 11, 2014)

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 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: February 11, 2014