

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. No. 03-16-90003

IN RE: COMPLAINT OF JUDICIAL MISCONDUCT
OR DISABILITY

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

MEMORANDUM OPINION

(Filed: March 8, 2016)

PRESENT: McKEE, Chief Judge.

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

¹ Complainant previously filed two complaints of judicial misconduct, J.C. Nos. 04-22 and 05-42, which were dismissed as frivolous and merits-related.

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., the U.S. Marshal's service, Clerk's Office employees, attorneys, and defendants in her civil suit. 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.

Complainant alleges that the Subject Judge engaged in judicial misconduct because he engaged in "fixing" and sabotaging her case, as well as "eugenics" and racial discrimination. Complainant further alleges that the Subject Judge had an improper motive for his rulings. Complainant's only support for these allegations, however, is her disagreement with the Subject Judge's decisions and procedural rulings. Complainant's complaint, which is more than three-hundred pages in length, consists primarily of copies of pleadings and court orders with handwritten notations on them disputing the Subject Judge's decisions, including his refusal to recuse himself from her case and his decision to vacate a default judgment against one of the defendants, among other decisions. 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).² In any event, there is no evidence to support Complainant’s allegations of misconduct and they 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.

Complainant also alleges that the Subject Judge conspired with Clerk’s Office employees and others. For example, Complainant alleges that the Subject Judge “coerced and COACHED two of the Office of the Clerks’ Staff to alter and affix the time stamping of its office on an improper document” In addition, Complainant alleges that documents were intentionally sent to the incorrect addresses to prevent timely service of rulings on “pro se litigants that are disfavored by the Office of the Clerks” The

² Complainant filed multiple appeals of the Subject Judge’s orders granting Defendants’ motions to dismiss. Complainant’s appeals were dismissed for lack of appellate jurisdiction. Complainant’s civil action is still pending at this time in District Court.

documents provided by Complainant in support of these allegations have been reviewed and they do not provide any evidence that the Subject Judge engaged in any form of judicial misconduct. There is no evidence to support these allegations and they are dismissed as frivolous and unsupported by any evidence that would raise an inference that misconduct has occurred. Id.

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: March 8, 2016)

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 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/ Theodore A. McKee
Chief Judge

Dated: March 8, 2016