

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. No. 03-16-90013

IN RE: COMPLAINT OF JUDICIAL MISCONDUCT
OR DISABILITY

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

MEMORANDUM OPINION

(Filed: April 14, 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 (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 filed a pro se civil complaint, which was assigned to the Subject Judge. Complainant moved to compel arbitration and the defendant moved to dismiss the complaint. The Subject Judge denied the motion to compel arbitration without prejudice so it could first consider the defendant's motion to dismiss. Complainant appealed. The Court of Appeals concluded that the Subject Judge should have decided the motion to compel arbitration before the motion to dismiss. Accordingly, the Court vacated the order and remanded the matter for further proceedings.

On remand, the Subject Judge ordered briefing on the issue of subject matter jurisdiction. The parties responded to that issue and Complainant also filed three motions seeking the Subject Judge's recusal. The Subject Judge declined to recuse, compelled arbitration, and stayed the case pending the arbitration. Complainant filed a motion for summary judgment. After a hearing, the Subject Judge administratively terminated the motion as improperly filed. Complainant also moved for recusal for a fourth time, which the Subject Judge again denied. Recently, Complainant filed a petition for a writ of mandamus in the Court of Appeals, again seeking the Subject Judge's recusal.

This is Complainant's second complaint of judicial misconduct concerning the same Subject Judge and the same District Court proceeding. See J.C. No. 03-15-90061. In this complaint, Complainant alleges that the Subject Judge "did a bait and switch" at the hearing on her motion for summary judgment, by discussing other motions and by "maeuver[ing] and collude[ing] with Defendant to attempt to violate my right to due

process.” Complainant alleges that the Subject Judge “has used her position to order, harass, discriminate against and threaten me (Plaintiff) to engage in behavior that would both violate my right to due process and violate the terms of the underlying contract in this matter.” Complainant further alleges that the Subject Judge “continues to create a hostile environment and her actions are discriminatory, preferential, and actionable.”

It is apparent that Complainant vigorously disagrees with many, if not all, of the decisions and rulings rendered by the Subject Judge in the course of her case. Complainant repeatedly has argued that the Subject Judge’s determinations reflect bias against her and have undermined her constitutional and contractual rights. Such allegations are clearly merits-related. “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.

Complainant’s four motions for recusal and her pending petition for writ of mandamus echo these same arguments. This administrative tribunal cannot review the merits of the Subject Judge’s decisions denying the motions for recusal, nor can it reach legal conclusions concerning the pending mandamus petition. 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 Complainant previously was informed in the decision dismissing her prior complaint of judicial misconduct, merits-related allegations do not constitute cognizable misconduct 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 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). Accordingly, all such allegations are dismissed.

Perhaps to attempt to undercut the conclusion that her allegations are merits-related, Complainant states, “I am not asking this investigation to change any of her rulings.” While that may be true, it is equally true that her claims of bias, harassment, collusion with the defendant, hostility, discrimination, and other forms of misconduct are all premised entirely upon Complainant’s disagreement with the merits of the Subject Judge’s decisions. A review of the record in the District Court proceeding reveals nothing to substantiate Complainant’s claims of impropriety. Because Complainant’s allegations of judicial misconduct are unsupported, they will be 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, the complaint is dismissed pursuant to 28 U.S.C. §§ 352(b)(1)(A)(ii) and (iii). As previously noted, less than one year ago, Complainant filed a similar complaint of misconduct against the same Subject Judge concerning the same District Court proceeding. See J.C. No. 03-15-90061. That complaint was dismissed under these same provisions. Complainant's attention is therefore directed to Rule 10(a), Rules for Judicial-Conduct and Judicial-Disability Proceedings.¹ Complainant is cautioned that future abuse of the judicial misconduct complaint procedure may result in the imposition of restrictions under this provision.

s/ Theodore A. McKee
Chief Judge

¹ Rule 10(a), Rules for Judicial-Conduct and Judicial-Disability Proceedings, states:

Abusive Complaints. A complainant who has filed repetitive, harassing, or frivolous complaints, or has otherwise abused the complaint procedure, may be restricted from filing further complaints. After giving the complainant an opportunity to show cause in writing why his or her right to file further complaints should not be limited, a judicial council may prohibit, restrict, or impose conditions on the complainant's use of the complaint procedure. Upon written request of the complainant, the judicial council may revise or withdraw any prohibition, restriction, or condition previously imposed.

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ORDER

(Filed: April 14, 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)(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: April 14, 2016