

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. Nos. 03-16-90042, 03-16-90043

IN RE: COMPLAINT OF JUDICIAL MISCONDUCT
OR DISABILITY

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

MEMORANDUM OPINION

(Filed: September 22, 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 Magistrate Judge (hereinafter “Subject Judge I”) and a United States District 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 merits of a decision or procedural ruling, or is frivolous or lacks sufficient evidence to

¹ Complainant previously filed three prior complaints of judicial misconduct against three different judges. His prior complaints were dismissed as frivolous and merits-related. J.C. Nos. 03-11-90062, 03-11-90063, and 03-14-90045.

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).

The present complaint is largely unintelligible, but Complainant appears to contend that Subject Judge II violated his due process rights when she sent him to a Federal Medical Center for psychiatric treatment. Complainant further appears to contend that because the docket reflects that the Government’s motions seeking psychiatric treatment for him were “terminated”, that he should not have been sent to a facility for treatment. Complainant demands an investigation.

In essence, Complainant seeks to collaterally attack Subject Judge II’s order authorizing his transportation to a medical facility. This type of allegation is merits-related and 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).

In any event, there is no evidence to support Complainant's allegations of misconduct. The docket and the Subject Judge's order reflect that the motions seeking treatment were marked "terminated" and denied as moot, without prejudice, because Complainant, by and through his attorney, agreed to be transported to a facility and take medication to attempt to render him mentally competent. In addition, Subject Judge II later entered an order concluding that Complainant was mentally incompetent to stand trial, "necessitating the need to conduct an evaluation regarding potential civil commitment" Thereafter, Subject Judge II issued an order dismissing the charges against Complainant because he was found mentally incompetent and another federal judge had ordered Complainant civilly committed. Accordingly, Complainant's allegations of misconduct regarding Subject Judge II 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 further alleges that Subject Judge II is a "malfeasant" who violated "cannon(s)" and his rights. Complainant further states that if Subject Judge II "is not right then [Subject Judge I] is not right" and describes Subject Judge II as a "lasher." Complainant appears to contend that his allegations of misconduct are supported by a per curiam opinion issued by another Circuit. The Circuit opinion has been reviewed and it

does not support a complaint of judicial misconduct in any way. In fact, the opinion dismisses Complainant's appeal of the District Court order denying relief on his petition under 28 U.S.C. § 2254.² To the extent Complainant seeks to collaterally challenge the Subject Judges' rulings, his complaint is dismissed as merits-related. See 28 U.S.C. § 352(b)(1)(A)(ii); Rules 3(h)(3)(A), Rule 11(c)(1)(B), Rules for Judicial-Conduct and Judicial-Disability Proceedings. To the extent Complainant alleges the Subject Judges engaged in judicial misconduct, the complaint is 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.

Finally, as noted above, Complainant filed three prior complaints of misconduct which were dismissed as frivolous and merits-related. See J.C. Nos. 03-11-90062, 03-11-90063, and 03-14-90045. Given the frivolous and merits-related nature of Complainant's current and prior allegations, his attention is directed to Rule 10(a), Rules for Judicial-Conduct and Judicial-Disability Proceedings.³ Future abuse of the misconduct procedures

² Another case referenced by Complainant concerned an unrelated individual and likewise does not support a complaint of judicial misconduct.

³ Rule 10(a), Rules for Judicial-Conduct and Judicial-Disability Proceedings, states:

(a) **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, the judicial council may prohibit, restrict, or impose conditions on the complainant's use of the

could result in the imposition of sanctions under that rule.

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

s/ Theodore A. McKee
Chief Judge

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: September 22, 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: September 22, 2016