

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. Nos. 03-16-90054, 03-16-90061

IN RE: COMPLAINT OF JUDICIAL MISCONDUCT
OR DISABILITY

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

MEMORANDUM OPINION

(Filed: October 28, 2016)

PRESENT: SMITH, Chief Judge.

These are two complaints filed under the Judicial Conduct and Disability Act, 28 U.S.C. §§ 351-64, against two United States District Judges (hereinafter “Subject Judge I” and “Subject Judge II”). For the reasons discussed below, the complaints 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). 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).

Complainant alleges that Subject Judge I sent U.S. Marshals to his house "to discuss a case," but that Subject I "did not make a record of the ex parte communication or give the opposing party an opportunity to be involved with the ex parte communication." Canon 3 of the Code of Conduct for United States Judges provides that "a judge should not initiate, permit, or consider ex parte communications or consider other communications concerning a pending or impending matter that are made outside the presence of the parties or their lawyers." Complainant provides no evidence that Subject Judge I "sent" the U.S. Marshals to Complainant's home for any improper reason or to discuss the merits of a pending case. Indeed, the alleged visit occurred after Subject Judge I issued a memorandum opinion dismissing Complainant's civil action.¹ Nor is there any evidence that the U.S. Marshal's putative contact with Complainant was outside of the scope of their duty to ensure the safe and secure conduct of judicial proceedings and protect federal judges. As explained by Complainant himself in a letter attached to a Motion for Relief from Judgment, the U.S. Marshals questioned Complainant about

¹ Complainant subsequently filed a notice of appeal and a panel of the Third Circuit affirmed the District Court's orders.

several letters he sent to Subject Judge I. One letter told Subject Judge I to “mark his calendar” for a certain date and the U.S. Marshals asked Complainant about the “impending event.” Accordingly, it is clear that the U.S. Marshals made a visit to Complainant’s home to investigate a potential threat to a federal judge. This action does not constitute an improper ex parte communication. Complainant’s allegation 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.²

Complainant further alleges, without providing any explanation, that Subject Judge I should have recused himself from his case. An allegation seeking to collaterally attack a failure to recuse is subject to dismissal as merits-related. 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

² Notably, Complainant has a history of making threatening remarks. For example, Subject Judge II issued an order in a civil action observing that, “the court notes that concerns have been raised that certain of [Complainant’s] emails have been of a threatening nature” and ordering communication only via “appropriate filings on the ECF system.” In addition, an email that Complainant forwarded to Subject Judge II contained the following statement: “Anyway, I think Nelson Mandela . . . would have had the judge killed and anyone that stood up for the judge’s injustice.” This email was attached to the complaint filed by Complainant in J.C. No. 03-15-90086.

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).

With respect to Subject Judge II, Complainant alleges that he filed an opinion containing “blatant lies, omissions in violation to his oath of office, PA and federal laws” and goes on to outline numerous disagreements with Subject Judge II’s opinion. These allegations are plainly merits-related and are not cognizable under the Judicial Conduct and Disability Act. *Id.* 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.

Finally, Complainant filed two prior complaints of misconduct against the same two judges. These complaints were dismissed as frivolous and merits-related. *See* J.C. Nos. 03-15-90085 and 03-15-90086. 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

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

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

s/ D. Brooks Smith
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: October 28, 2016)

PRESENT: SMITH, Chief Judge.

On the basis of the foregoing opinion entered on this date, it is ORDERED AND ADJUDGED that the written complaints brought pursuant to 28 U.S.C. § 351 are 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/ D. Brooks Smith
Chief Judge

Dated: October 28, 2016