

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. Nos. 03-13-90055, 03-13-90056, 03-13-90057, 03-13-90058,
03-13-90059, 03-13-90067, 03-13-90068, 03-13-90071, 03-13-90072

IN RE: COMPLAINTS OF JUDICIAL MISCONDUCT
OR DISABILITY

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

MEMORANDUM OPINION

Filed: November 22, 2013

PRESENT: McKEE, Chief Judge.

These three complaints are filed under the Judicial Conduct and Disability Act, 28 U.S.C. §§ 351-64, against two United States Magistrate Judges (“Subject Judge I” and “Subject Judge II”), two United States District Judges (“Subject Judge III” and “Subject Judge IV”) and three United States Circuit Judges (“Subject Judge V,” “Subject Judge VI,” and “Subject Judge VII”). 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).

Complainant is a small business owner. He is also a frequent and prolific pro se litigant who has been involved in civil cases before Subject Judges I through IV and in appeals before Subject Judges V through VII over the course of the past several years. Complainant's proceedings are too lengthy and complex to discuss in detail, but several can be described in brief to provide context for the instant judicial misconduct complaints.

In one proceeding, in July 2011, Complainant filed a notice of removal in a state court proceeding in which he and his company were named as defendants. The matter was assigned to Subject Judge III and was referred to Subject Judge I. In September 2011, Subject Judge III adopted the recommendation made by Subject Judge I and remanded the matter to state court based upon a defect in the removal process – namely, that Complainant, a non-attorney, could not file a removal notice on behalf of his company. On appeal, Subject Judges V, VI, and VII dismissed the matter for lack of appellate jurisdiction to review remand orders based upon defects in the removal process.

In a different proceeding, Complainant filed a lengthy complaint in District Court in February 2013 naming fourteen institutional and individual defendants, relating to Complainant's efforts to attend flight school. The matter was assigned to Subject Judge III and referred to Subject Judge I. Later that month, Complainant moved for the Subject Judges' recusal based upon their participation in Complainant's prior unrelated case. The motion was denied. Complainant attempted to obtain a default judgment against the

defendants, but was unsuccessful. In April 2013, he filed a petition for a writ of mandamus, seeking to have the Court of Appeals direct entry of a default judgment and review various other decisions. The petition remains pending before the Court of Appeals. Ultimately, Subject Judge III dismissed the District Court proceeding for failure to state a claim upon which relief could be granted. Complainant appealed, but the appeal was dismissed because Complainant failed to pay the filing fee.

In a third proceeding, Complainant filed a breach of contract complaint in April 2013, invoking federal diversity jurisdiction, which was assigned to Subject Judge IV and was referred to Subject Judge II. Complainant moved for entry of a default judgment, and the motion was denied. Complainant repeatedly sought reconsideration, and the motions were denied. The case remains pending.

In three separately-filed judicial misconduct complaints filed in August, September, and October 2013, Complainant sets forth a litany of disjointed, repetitive, and largely unintelligible assertions. As best I can interpret Complainant's allegations, they appear largely to reflect his disagreement with decisions rendered by the Subject Judges in his cases – most particularly, decisions prohibiting Complainant from representing his companies in litigation and decisions to deny his repeated motions for the entry of default judgments against various defendants.

In the first judicial misconduct complaint, Complainant alleges, for instance, that two of his 2013 district court cases “must be resolved by way of default judgment” and, because default judgment was not granted, Complainant theorizes the existence of a

conspiracy involving Subject Judges I, III, V, VI, and VIII, which is allegedly “entrenched in ‘local custom.’” In addition, Complainant cites repeatedly to a local appellate rule concerning motions for summary action and states that “‘there is no lawful table veto process’ (disqualification is mandatory).” Complainant further states that Subject Judges I and III remanded his 2011 case to state court in order “to invalidate the Civil Rights of any ‘closely held for profit entity that would dare to appear self-represented’ being careful to not leave a written paper trail so as to avoid ‘reversible error.’” In addition, Complainant alleges that “[t]he Panel of [Subject Judges V, VI, and VII] was ‘unlawfully concocted in violation of 28 U.S.C. § 46(b) for the express purpose of ‘denying the constitutionally protected right of self-representation’ leading to an ‘invalidation of due process to [Complainant] and his closely held for profit entities.’”

In the second judicial misconduct complaint, Complainant alleges that Subject Judges II and IV “are so use to violating all rules they have none.” Complainant reiterates his allegations that a default judgment should have been entered in his favor, and states: “‘Must Enter Default’ . . . ‘must enter a scheduling order within 90 days’ . . . ‘must enter an appropriate sanction’ for a Rule 26 violation in the 3rd Cir means nothing. . . .” (ellipses in original). Complainant further alleges that “the Courts of the 3rd Cir refuse to ‘accept jurisdiction’ under the Rules Provided by Congress, and refuse to enforce the laws if it were to mean a ‘closely held for profit entity or individual will prevail against represented parties.’”

Finally, in the third judicial misconduct complaint, Complainant alleges that the Court of Appeals plans “to ‘delay unlawfully a determination’” on his petition for a writ of mandamus, “with the hopes that the Duo of [Subject Judges I and III] will be able to dismiss [the underlying case] for want to Federal Jurisdictional in such a way as to pass the ‘smell test.’” Complainant alleges that the Clerk of the District Court and the Clerk of the Court of Appeals are conspiring with the Subject Judges “to find a way to dismiss” one of his appeals for lack of jurisdiction, and to delay ruling on his pending petition for a writ of mandamus in the hope that it will become moot.¹

“An allegation that calls into question the correctness of a judge’s ruling . . . is merits-related.” Rule 3(h)(3)(A), Rules for Judicial-Conduct and Judicial-Disability Proceedings. In the three instant misconduct complaints, Complainant repeatedly has attempted to call into question the correctness of the Subject Judges’ decisions and rulings. Indeed, it appears that he is improperly attempting in this administrative forum to re-litigate claims he has previously presented in the course of his numerous cases before the District Court and the Court of Appeals. For instance, as purported evidence of his allegations of judicial misconduct, he has attached copies of motions that he filed in his

¹ To the extent Complainant’s allegations concern the Clerks of the District Court and the Court of Appeals, these individuals are not covered by the Judicial Conduct and Disability Act and 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. In addition, to the extent Complainant attempted to bring a complaint against unnamed Circuit Judges merely identified as the “panel” on the mandamus petition, Complainant was informed by letter that the complaint was not accepted for filing as to this otherwise-unspecified “panel.” See Rule 8(d), Rules for Judicial-Conduct and Judicial-Disability.

various court proceedings. 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).

Merits-related allegations are not cognizable as judicial misconduct. 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. Accordingly, Complainant’s merits-related allegations are dismissed.

Apart from his merits-related allegations, Complainant offers nothing to substantiate his unlikely theory that the Subject Judges are involved in a conspiracy against him. The record does not support such a claim. Accordingly, to the extent they are not merits-related, Complaint’s allegations are 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.

To the extent Complainant alleges undue delay in his mandamus proceeding, a claim of delay in a single proceeding may qualify as cognizable misconduct only where “the allegation concerns an improper motive in delaying a particular decision. . . .” Rule 3(h)(3)(B), Rules for Judicial-Conduct and Judicial-Disability Proceedings. Complainant does not explicitly allege an improper motive on the part of any particular Subject Judge;

indeed, no named Subject Judge appears to have participated in the case as of this date. Rather, Complainant alleges more generally that the delay is an example of the existence of the previously-discussed conspiracy against him.

Although Complainant's mandamus petition remains pending, the record does not substantiate a claim that any delay is attributable to judicial misconduct. Indeed, Complainant himself has extended the length of time necessary to resolve his petition by periodically filing voluminous supplementary materials and motions. I remain confident that a decision on the petition for a writ of mandamus will be forthcoming, and I find nothing to support Complainant's vague and improbable allegations concerning the existence of a conspiracy. Accordingly, Complainant's claim of intentional delay is dismissed as 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)(D), Rules for Judicial-Conduct and Judicial-Disability Proceedings.

For the foregoing reasons, these complaints are dismissed pursuant to 28 U.S.C. § 352(b)(1)(A)(i), (ii), and (iii).²

Finally, I note that, in a period of three months, Complainant filed three voluminous judicial misconduct complaints naming seven different Subject Judges. As

² In addition to the three complaints, Complainant filed a number of additional documents containing allegations not made under penalty of perjury as required by Rule 6, Rules for Judicial-Conduct and Judicial-Disability Proceedings. I have considered these allegations under Rule 5 and conclude that they do not provide "reasonable grounds for inquiry" into the existence of judicial misconduct. Accordingly, I decline to identify any complaints based upon these allegations.

discussed, the allegations are repetitive and largely incomprehensible, and are subject to dismissal as merits-related, unsupported, and frivolous. Accordingly, Complainant's attention is directed to Rule 10(a), Rules for Judicial-Conduct and Judicial-Disability Proceedings.³ Complainant is cautioned that future abuse of the judicial misconduct complaint procedure may result in the imposition of restrictions under that rule.

/s/ Theodore A. McKee
Chief Judge

³ 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: November 22, 2013

PRESENT: McKEE, 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)(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 of the Court of Appeals within **35 days** of the date on the letter informing the parties of the Chief Judge's order.

18(b) Form. The petition should be in letter form, addressed to the Circuit Executive 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 Office of the Circuit Executive 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: November 22, 2013