

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. No. 03-13-90007

IN RE: COMPLAINT OF JUDICIAL MISCONDUCT
OR DISABILITY

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

MEMORANDUM OPINION

(Filed: April 3, 2013)

PRESENT: McKEE, Chief Judge.

This complaint is 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, on behalf of her parents, filed a pro se complainant in state court, asserting claims of discrimination and statutory violations relating to the defendant bank’s efforts to foreclose on the parents’ home. The bank removed the matter to District Court

and the matter was assigned to the Subject Judge. After an initial status conference, the Subject Judge dismissed the complaint without prejudice, noting that the complaint alleged no facts and merely attached hundreds of pages of unexplained exhibits. In addition, the Subject Judge noted that, because Complainant was not licensed to practice law, she could not file a complaint on her parents' behalf.

Complainant and her parents jointly filed an amended complaint. The defendant moved to dismiss it. After an unsuccessful settlement conference, the Subject Judge issued a memorandum opinion and order granting the defendant's motion, concluding that the amended complaint failed to correct the deficiencies that had been noted in the initial complaint. The Subject Judge therefore dismissed the amended complaint with prejudice pursuant to Rules 8 and 12(b)(6) of the Federal Rules of Civil Procedure. No appeal was filed.

In the instant judicial misconduct complaint, Complainant raises allegations of the Subject Judge's "inappropriate conduct, lack of knowledge or interest, preparedness and perhaps his incompetence to continue to serve on the bench."¹ Specifically, Complainant alleges the Subject Judge did not adequately review the 700+ pages of documents that she filed in support of her complaint, contending that if he "would have read the documents

¹ Complainant purported to file this misconduct complaint on behalf of herself and her parents, but only Complainant signed the complaint under penalty of perjury. Complainant was informed that, if her parents wished to pursue a complaint pursuant to Rule 6, Rules for Judicial-Conduct and Judicial-Disability Proceedings, they must submit a signed and verified complaint. Complainant's parents did not do so. Accordingly, this matter will proceed under Rule 6 as to Complainant only. The complaint is reviewed under Rule 5(b) as to the parents' allegations.

filed, he would have seen [that Complainant’s parents] gave authorization . . . for [Complainant] to be their authorized representative.” She also speculates vaguely that the Subject Judge may have permitted the defendant bank “to abuse the tribunal” by removing the case from state court. In addition, Complainant alleges that, during the settlement conference, the Subject Judge “was not apprised of the case and all and furthermore, he projected an I don’t care attitude” toward Complainant and her parents. She states that the Subject Judge “just ignored” her father and “was very disinterested in what [Complainant and her father] had to say being they were representing themselves.” Complainant concludes by alleging that the Subject Judge’s decision to dismiss the complaint “was tainted by those illegalities and was improper.”

Clearly, Complainant disagrees with the merits of the Subject Judge’s decisions and rulings, including the decision not to permit Complainant to represent her parents in the litigation and the decision to dismiss the complaint. “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. Merits-related disputes do not constitute cognizable judicial misconduct.² Accordingly, these allegations are dismissed. 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.

Moreover, as a factual matter, the record reflects that the Subject Judge reviewed Complainant’s documents and considered Complainant’s arguments. In his memorandum

² The appropriate method for challenging the merits of the Subject Judge’s decisions and rulings would have been to file a notice of appeal after the complaint was dismissed.

opinion dismissing the amended complaint, the Subject Judge expressly stated that he reviewed the exhibits to the complaint and amended complaint, but concluded they did not shed light on the substance of the claims. In addition, the Subject Judge articulated his reasons for concluding that a power of attorney document was not sufficient to permit Complainant to engage in the practice of law on behalf of her parents. Accordingly, in addition to being merits-related, Complainant's allegations entirely lack any factual basis. Accordingly, they are also dismissed as frivolous and unsupported by evidence that would raise an inference that misconduct 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 presents nothing apart from her merits-related allegations to substantiate her accusations of incompetence and bias. The record does not offer any support whatsoever for such these claims. Complainant's unfounded accusations are frivolous and unsupported by evidence that would raise an inference that misconduct 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).³

³ The allegations concerning Complainant's parents are identical to Complainant's allegations, which are set forth above. Accordingly, after reviewing the parents' allegations pursuant to Rule 5(b), Rules for Judicial-Conduct and Judicial-Disability Proceedings, I decline to identify a complaint under Rule 5(a), Rules for Judicial-Conduct and Judicial-Disability Proceedings, for all of the reasons discussed.

/s/ Theodore A. McKee
Chief Judge

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ORDER

(Filed: April 3, 2013)

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 clerk of the court of appeals within **35 days** of the date on the clerk's letter informing the parties of the chief judge's order.

18(b) Form. The petition should be in letter form, addressed to the clerk 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 Clerk’s Office 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: April 3, 2013