

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. No. 03-13-90026

IN RE: COMPLAINT OF JUDICIAL MISCONDUCT
OR DISABILITY

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

MEMORANDUM OPINION

(Filed: July 1, 2013)

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 (hereinafter “Subject Judge”).

Complainant is proceeding *pro se* in a civil action against her adoptive parents and makes serious allegations of abuse on the part of both her adoptive mother and father. I conducted a limited inquiry in this matter under 28 U.S.C. § 352(a) and requested that the Subject Judge file a response to the complaint. See also Rule 11(b), Rules for Judicial-Conduct and Judicial-Disability Proceedings.¹ In his thorough response, the Subject Judge outlined the procedural history of the civil action pending before him and stated that the complaint should be dismissed because Complainant’s allegations are merits-related

¹ In accordance with 28 U.S.C. § 352(a), a copy of this response was not provided to Complainant.

and are unsupported by sufficient evidence to raise an inference that judicial misconduct or disability occurred. For the reasons discussed below, I agree and 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). 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).

First, Complainant alleges that in the course of her civil action, the Subject Judge took no action on a motion to stay transfer of property for approximately two and a half months and that this delay allowed “defendants to sell off and give away more of their property.”² Allegations of delay are subject to dismissal as merits-related. 28 U.S.C. § 352(b)(1)(A)(ii). See also Rules 3(h)(3)(A), 3(h)(3)(B) (cognizable misconduct does not include “an allegation about delay in rendering a decision or ruling, unless the allegation

² Complainant’s civil suit is still pending. Complainant filed an appeal of a Memorandum Opinion and Order issued by the Subject Judge, which is also still pending.

concerns an improper motive in delaying a particular decision or habitual delay in a significant number of unrelated cases”), 11(c)(1)(B), Rules for Judicial-Conduct and Judicial-Disability Proceedings.

To the extent Complainant suggests that the Subject Judge had an improper motive for his putative delay, her allegations are likewise subject to dismissal. The Subject Judge’s response makes clear that the case was stayed at the time Complainant filed her motion to stay transfer of property and a subsequent motion seeking injunctive relief. Furthermore, at the direction of the Subject Judge, the Clerk of Court was in the process of attempting to refer representation of Complainant to a member of the Federal Civil Panel. In addition, after issuing an order lifting the stay, the Subject Judge provided defendants with an opportunity to file a response to Complainant’s motion. Under these circumstances, it is clear that there was no delay for an improper motive on the part of the Subject Judge and the allegations are dismissed pursuant to 28 U.S.C. § 352(b)(1)(B) as lacking “any factual foundation.”

Complainant also alleges that the Subject Judge “accepted documents from defendants without me getting them” and instructed her that copies of documents from the Court would cost 50 cents a page. Complainant contends that this is “ex parte taken to the extreme. I not only don’t see copies of what the judge is seeing, I have to pay for copies after the judge has seen them.” The docket reflects that the documents in question were docketed and publicly available. In addition, copies of the updated docket reflecting all documents filed in the case were sent to the parties by the Court prior to the issuance of

the Subject Judge's Memorandum Opinion. The docket further reflects that the Subject Judge instructed the parties that communications with the Court must be served upon all the parties and attach a certificate of service. Under these circumstances, there clearly was no "ex parte" communication between the Subject Judge and the defendants. Moreover, the cost of copies of any documents requested from the Court is based on policy directives from the Administrative Office of the United States Courts and not individual judges. Accordingly, Complainant's allegations 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.

The complaint also contains additional meritless allegations about *ex parte* contacts. Complainant alleges that there is a statement "hidden" in the Subject Judge's order acknowledging that defendants "personally visited the Judge and gave him papers." There is no such "hidden" statement. The Subject Judge's order merely provides that, "the parties will not send or deliver any correspondence to chambers" and directs them to file all correspondence and pleadings with the Clerk. Furthermore, Complainant speculates that a prosecutor may have had an *ex parte* contact with the Subject Judge about a subpoena. There is no evidence to support this statement. In the first instance, the Department of Justice is not a party to the litigation. Also, Complainant herself provided the Subject Judge with a copy of the Department of Justice's letter addressed to her objecting to the subpoena on the grounds of privilege. Thus, the foregoing allegations are

subject to dismissal as frivolous and unsupported by any evidence that would raise an inference that misconduct has occurred. Id.

Complainant further alleges that the Subject Judge “attack[ed]” and made “veiled threats” concerning her uncle, an attorney, in statements made in a Memorandum Opinion.³ However, Canon 3B(5) of the Code of Conduct for United States Judges provides that a “judge should take appropriate action upon learning of reliable evidence indicating the likelihood that . . . a lawyer violated applicable rules of professional conduct.” Here, in his Memorandum Opinion, the Subject Judge cautioned that to the extent Complainant’s uncle was advising her in a “ghostwriter capacity,” such conduct was unethical and could serve as a basis for sanctions. The Subject Judge cited several cases in support of this statement, but did not make a finding that in fact Complainant’s uncle had acted in an unethical manner. Irrespective of whether the Subject Judge was correct concerning the potentially unethical nature of Complainant’s uncle’s alleged conduct, the Subject Judge’s action does not constitute an improper “threat.”

Complainant’s allegations therefore do not support a complaint of judicial misconduct under the Act and are dismissed. 28 U.S.C. § 352(b)(1)(A)(iii); Rule 11(c)(1)(C), (D), Rules for Judicial-Conduct and Judicial-Disability Proceedings.⁴

³ Complainant’s uncle has also filed a complaint of judicial misconduct concerning the Subject Judge’s statements. J.C. No. 03-13-90027. These allegations are addressed in a separate memorandum opinion.

⁴ I express no opinion as to the merits of the Subject Judge’s statements regarding whether the uncle’s putative conduct was unethical and potentially subject to sanctions. In any event, to the extent Complainant seeks to collaterally attack any of the Subject Judge’s rulings, her allegations are subject to dismissal as merits-related. See 28 U.S.C.

Finally, Complainant alleges that she has been the victim of “abuse” in federal court and that the Subject Judge has behaved in “ways I found shocking.” However, Complainant’s sole support for these allegations is her disagreement with the Subject Judge’s rulings. For example, Complainant criticizes the Subject Judge’s denial of her motion to compel, motions for injunctive relief, and motion to amend the complaint, as well as the Subject Judge’s decision to grant additional time to defendants to answer the complaint. These allegations are plainly merits-related and are 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 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.

For the foregoing reasons, the complaint is dismissed pursuant to 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.

§ 352(b)(1)(A)(ii) and (iii) and 28 U.S.C. § 352(b)(1)(B).

/s/ Theodore A. McKee
Chief Judge

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ORDER

(Filed: July 1, 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) and 28 U.S.C. § 352(b)(1)(B).

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: July 1, 2013