

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. No. 03-13-90048

IN RE: COMPLAINT OF JUDICIAL MISCONDUCT
OR DISABILITY

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

MEMORANDUM OPINION

(Filed: September 27, 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 initiated a pro se miscellaneous action in District Court in May 2011, seeking to vacate a judgment rendered by a District Court in a different Judicial Circuit.

The matter was assigned to the Subject Judge. There was no docket activity for quite some time. In September 2012, the Subject Judge issued an order directing Complainant to show cause why the matter should not be dismissed for want of prosecution. Complainant responded by renewing her motion to vacate the judgment. In March 2013, the Subject Judge issued an order denying the motion and closing the case. Complainant did not appeal.

In this complaint of judicial misconduct, Complainant alleges that the Subject Judge's order denying her motion to vacate a judgment was "in willful violation/deprivation of due process of law." In the attachments appended to the complaint, Complainant elaborates upon her disagreement with the Subject Judge's order. Among other things, she alleges: (1) the order contains a false statement, inasmuch the Subject Judge states that he reviewed Complainant's pro se brief; (2) the Subject Judge "inappropriately placed his signature after numerical item 3, as opposed to the end of the order; and (3) the Subject Judge "denied a motion and dismissed a civil action with prejudice in which by his own admission he asserts he lacked subject-matter jurisdiction. . . ." (emphasis omitted).

All of these allegations are merits-related, as they reflect Complainant's disagreement with various aspects of the Subject Judge's decision to deny her motion to vacate. "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. 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.

This administrative proceeding is not an appropriate forum in which to collaterally attack the merits of the Subject Judge’s decision. 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). Accordingly, Complainant’s merits-related allegations are dismissed.

Apart from her merits-related allegations, Complainant offers nothing to explain or support her contentions that the Subject Judge acted in “willful” violation of her rights and was part of a “judicial injustice and cover-up.” The record reflects no evidence of impropriety. Accordingly, to the extent they are not merits-related, Complaint’s allegations are 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.

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

 /s/ Theodore A. McKee
Chief Judge

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ORDER

(Filed: September 27, 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 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: September 27, 2013