

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. No. 03-13-90075

IN RE: COMPLAINT OF JUDICIAL MISCONDUCT
OR DISABILITY

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

MEMORANDUM OPINION

(Filed: February 19, 2014)

PRESENT: RENDELL, Circuit Judge.¹

This complaint is filed under the Judicial Conduct and Disability Act, 28 U.S.C. §§ 351-64, against a United States Circuit 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).

¹ Acting under Rule 25(f), Rules for Judicial-Conduct and Judicial-Disability Proceedings.

Complainant filed 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. There was no docket activity for some time. In September 2012, the presiding District Judge issued an order directing Complainant to show cause why the matter should not be dismissed for want of prosecution. Complainant responded by renewing the motion to vacate the judgment. In March 2013, the presiding District Judge denied the motion and closed the case. Complainant did not appeal. In July 2013, Complainant filed a complaint of judicial misconduct against the presiding District Judge. See J.C. No. 03-13-90048. The Subject Judge dismissed the misconduct complaint pursuant to 28 U.S.C. § 352(b)(1)(A)(ii) and (iii). Complainant filed a timely petition for review. The Judicial Council concluded that Subject Judge's decision should be affirmed and therefore denied the petition.

In the instant complaint of judicial misconduct, Complainant alleges that the Subject Judge "disregard[ed] the uncontroverted evidence and facts before him" when he "entered a false Opinion and Order pursuant to the Judicial Conduct and Disability Act, 28 U.S.C. §§ 351-64, whereby he intentionally misrepresented and omitted uncontroverted allegations in my Formal Judicial Misconduct Complaint." Specifically, Complainant disagrees with the Subject Judge's conclusion that her allegations in the first misconduct proceeding were merits-related. She states that the Subject Judge "illegally dismiss[ed] my meritorious misconduct complaint. . . ."

Complainant's allegations of misconduct are, once again, plainly merits-related. Complainant takes issue with conclusions reached by the Subject Judge in the course of the prior misconduct proceeding. "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. This rule applies to allegations concerning rulings rendered in the course of a judicial misconduct proceeding. See Commentary to Rule 3, Rules for Judicial-Conduct and Judicial-Disability Proceedings ("[A] complaint challenging the correctness of a chief judge's determination to dismiss a prior misconduct complaint would be properly dismissed as merits-related . . . even though it does not concern the judge's rulings in Article III litigation."). A disagreement with the merits of a judicial ruling does not give rise to cognizable 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.

Complainant already has pursued a proper challenge to the Subject Judge's disposition of the prior misconduct complaint by filing a petition for review with the Judicial Council pursuant to Rule 18, Rules for Judicial-Conduct and Judicial-Disability Proceedings. The Judicial Council's order resolving the petition is final and conclusive, and is not reviewable on appeal or otherwise. Complainant's attempt to again challenge the decision by filing a new misconduct complaint is entirely inappropriate. 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.

Complainant's allegations of "intentional misrepresentations" and "fraud upon the court" pertain solely to her disagreement with the Subject Judge's ruling; they are otherwise unsubstantiated. Accordingly, to the extent Complainant has presented any non-merits-related allegations, they 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.

For the foregoing reasons, this complaint is dismissed pursuant to 28 U.S.C. § 352(b)(1)(A)(ii) and (iii). Complainant's attention is directed to Rule 10(a), Rules for Judicial-Conduct and Judicial-Disability Proceedings.² Complainant is cautioned that

² 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.

future abuse of the judicial misconduct complaint procedure may result in the imposition of restrictions under that rule.

s/ Marjorie O. Rendell
Circuit Judge

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ORDER

(Filed: February 19, 2014)

PRESENT: RENDELL, Circuit Judge.¹

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.

¹ Acting under Rule 25(f), Rules for Judicial-Conduct and Judicial-Disability Proceedings.

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/ Marjorie O. Rendell
Circuit Judge

Dated: February 19, 2014