

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. No. 03-15-90002

IN RE: COMPLAINT OF JUDICIAL MISCONDUCT
OR DISABILITY

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

MEMORANDUM OPINION

(Filed: May 15, 2015)

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 was a pro se plaintiff along with other individuals in a wrongful termination suit against their former employer and several individual defendants. The

defendants removed the matter to District Court and the case was assigned to the Subject Judge. After Complainant and his fellow plaintiffs amended the complaint, the defendants moved to dismiss. The Subject Judge granted the motions in part for lack of subject matter jurisdiction and in part for failure to state a claim upon which relief can be granted. The plaintiffs did not appeal. Although the matter has been concluded for more than two years, the plaintiffs recently filed a motion to remand, which remains pending.

In this lengthy, meandering, and unclear complaint of judicial misconduct, Complainant makes numerous claims but offers few factual allegations to support or explain them.¹ Complainant states baldly that the Subject Judge “acted unconstitutionally or outside of his/her jurisdiction” and “was discriminating against [him] because of his gender, race, color, protected characteristics. . . .” In addition, Complainant avers that the Subject Judge was involved in a conspiracy whose “purpose was financial or mean spirited, boorish, wanton and well calculated plan for ‘reprisal’” and was “acting under color of law that ‘shocks the conscience.’” Finally, Complainant claims he suffered severe emotional trauma as a result of his experiences and seeks “redress [for] . . . ‘abuse of authority’” and “lack of decorum.”²

¹ Although the complaint also purports to present claims on behalf of one of Complainant’s co-plaintiffs, only Complainant signed the complaint under penalty of perjury. Accordingly, this opinion refers to a single Complainant.

² Complainant also raises allegations concerning the defendants and the attorneys who represented them. Individuals who are not judges are not covered by the Judicial Conduct and Disability Act. See Rule 4, Rules for Judicial-Conduct and Judicial-Disability Proceedings. This judicial misconduct proceeding is not a proper forum for considering

While Complainant did not clearly set forth the basis for his claims, they appear to be based largely, if not entirely, upon his disagreement with the outcome of his case. Complainant specifically cites a few discrete rulings with which he disagrees; for instance, he alleges that the Subject Judge “den[ied] plaintiffs stenographer to record civil proceedings” and “depart[ed] early or near end of trial disrupted courtroom, procedures, lack of court room decorum and undue prejudice to defense. . . .” In addition, he spends much of the complaint recounting the factual basis for his wrongful termination suit, implying that the outcome of the case should have been different. Such allegations are merits-related. Rule 3(h)(3)(A), Rules for Judicial-Conduct and Judicial-Disability Proceedings (“An allegation that calls into question the correctness of a judge’s ruling, including a failure to recuse, without more, is merits-related.”).

If Complainant had wished to challenge the disposition of his case, he should have pursued a merits appeal at the time judgment was entered. This administrative proceeding, filed years after the case concluded, does not provide an alternate route to pursue substantive review of the merits of the underlying case. Similarly, to the extent Complainant seeks the Subject Judge’s recusal, such a request is inappropriate in a judicial misconduct proceeding. The proper course would have been to file a motion for recusal in the District Court.³ 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 the merits of allegations concerning non-judges. Accordingly, such allegations will not be addressed in this opinion. See 28 U.S.C. §§ 351, 352(b)(1)(A)(i).

³ A decision on a recusal motion is merits-related. See Rule 3(h)(3)(A), Rules for Judicial-Conduct and Judicial-Disability Proceedings.

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 do not constitute cognizable 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, 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.

As previously noted, Complainant offers few allegations to support or explain his vague and sweeping claims of wrongdoing, including conspiracy, discrimination, abuse of authority, and lack of decorum. A review of the record reveals no evidence to substantiate any such claims. Accordingly, to the extent they are not merits-related, Complainant's remaining claims are dismissed as frivolous and unsupported by evidence sufficient to 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, this complaint is dismissed pursuant to 28 U.S.C. §§ 352(b)(1)(A)(i), (ii), and (iii).

s/ Theodore A. McKee
Chief Judge

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ORDER

(Filed: May 15, 2015)

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)(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 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: May 15, 2015