

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. No. 03-15-90085

IN RE: COMPLAINT OF JUDICIAL MISCONDUCT
OR DISABILITY

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

MEMORANDUM OPINION

(Filed: December 3, 2015)

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”). 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).

As a preliminary matter, Complainant makes allegations concerning individuals and entities who are not subject to the Judicial Conduct and Disability Act; e.g., state judges and county employees. See 28 U.S.C. §§ 351, 352(b)(1)(A)(i); Rule 4, Rules for Judicial-Conduct and Judicial-Disability Proceedings. Accordingly, these allegations will not be addressed in this opinion.

Complainant alleges that the Subject Judge engaged in judicial misconduct because he “violated mandat[ory] reporting of sex abuse laws while handling [his] case.” This allegation appears to be based on the Subject Judge’s dismissal of his civil complaint without providing him the contact information for law enforcement investigating Complainant’s allegations of sexual abuse. In a “private criminal complaint” attached to his complaint of misconduct, Complainant reiterates this allegation and states that he faxed several letters to the Subject Judge requesting contact information and reporting a medical issue. Complainant also alleges that the Subject Judge “conspired” with defendants and his complaint was dismissed “with knowledge that the defendants refused to provide Complainant public information”

Complainant provides no evidence of a conspiracy or any other type of judicial misconduct. Moreover, it is not judicial misconduct to dismiss a federal civil suit without providing contact information for individuals involved with a state or local investigation. These 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.

Complainant also accuses the Subject Judge of bias related to the “2014 election because [his] case was always dismissed and closed the Thursday prior to an election.” This allegation is based on speculation; Complainant provides no evidence for this claim. This allegation is likewise dismissed as frivolous and unsupported by any evidence that would raise an inference that misconduct has occurred. Id.

Finally, to the extent Complainant seeks to collaterally challenge the dismissal of his civil action, his complaint is subject to dismissal as merits-related. 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 . . . 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).¹ 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).

¹ Complainant filed a notice of appeal of this dismissal which remains pending. I express no opinion as to the merits of this appeal.

For the foregoing reasons, the 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: December 3, 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 Circuit Executive within **42 days** after the date of the chief judge's order.

18(b) Form. The petition should be in letter form, addressed to the Circuit Executive, 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 and on the Court of Appeals’ internet site, www.ca3.uscourts.gov.

s/ Theodore A. McKee
Chief Judge

Dated: December 3, 2015