

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. No. 03-15-90087

IN RE: COMPLAINT OF JUDICIAL MISCONDUCT
OR DISABILITY

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

MEMORANDUM OPINION

(Filed: January 15, 2016)

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 Magistrate 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).

More than five years ago, Complainant, through counsel, filed an employment discrimination and retaliation complaint against the state, a police department, and several

individual supervisors. The matter was assigned to a District Judge, who referred it to the Subject Judge for a settlement conference. Shortly after the settlement conference, the parties consented to proceed before the Subject Judge for all purposes.

In late 2013, the matter proceeded to a seven-day jury trial. The jury returned a partial verdict in Complainant's favor on his claims against one defendant and awarded him compensatory and punitive damages; the jury was unable to render a verdict on the remaining claims. The parties filed post-trial motions. In the course of resolving the post-trial motions, the Subject Judge vacated the award of punitive and compensatory damages, entered a nominal award of \$1.00, and granted judgment as a matter of law on a several discrete claims. A number of claims remained unresolved and required a second trial.

The second trial was conducted in late 2014 and lasted three days. The jury returned a verdict in favor of Complainant and awarded monetary damages totaling nearly two million dollars. The defendants filed a motion for judgment as a matter of law or in the alternative for a new trial. The Subject Judge granted the motion for judgment as a matter of law on five claims, denied it on two claims, and conditionally denied it on one claim, subject to Complainant's acceptance of a remittitur reducing the jury's monetary award by approximately 95%. The Subject Judge's order provided that, if remittitur were not accepted, a third trial would be ordered. Complainant accepted the remittitur and filed a notice of appeal. The appeal remains pending.

In this pro se complaint of judicial misconduct, Complainant claims the Subject Judge showed prejudice and bias against him and demonstrated "a 'pattern' of dismissing

claims against the defendants that award me large monetary compensation by the jury.” I requested that the Subject Judge respond to Complainant’s claims. After review of the record and the Subject Judge’s response, I address the allegations of the complaint.¹

Among other things, Complainant alleges that the decision to reduce the first jury award to a nominal sum of \$1.00 “demonstrates that [the Subject Judge] was out of touch with reality and prejudiced against me.” Complainant “was under the impression that the jury was supposed to determine applicable damages” and “fervently believe[s] . . . [the jury was] confused by the judge’s jury instructions.” In addition, Complainant observes that the Subject Judge did not require the defendants to be present in the courtroom for the reading of the second jury verdict. Complainant felt this reflected “a double standard, and blatant disrespect for the sanctity of the jury process.”

Complainant also disputes a number of findings of fact in the lengthy memorandum opinion addressing post-judgment motions after the second jury trial; he contends that he refuted the findings in testimony he presented at trial. Complainant alleges that, in the memorandum opinion, “[t]he judge purposefully manipulated the written record to accomplish his agenda of mitigating the claims against [the defendant]” and decided matters in dispute that should have, in Complainant’s view, been left to the jury. Finally, Complainant argues that the remittitur of the second jury award was based upon an “erroneous and unfavorable determination” reached for the improper purpose of “facilitat[ing] his desired result of an acquittal, or dismissal of all claims.”

¹ Pursuant to the Judicial Conduct and Disability Act, the Subject Judge’s response was not made available to Complainant. 28 U.S.C. § 352(a).

These allegations dispute the merit of the Subject Judge’s decisions and rulings in the course of the litigation. As such, they are merits-related. “An allegation that calls into question the correctness of a judge’s ruling. . . , without more, is merits-related.” Rule 3(h)(3)(A), Rules for Judicial-Conduct and Judicial-Disability Proceedings. 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.

Complainant has filed an appeal from the judgment in his case. The legal merit of the Subject Judge’s decisions and rulings, including the reduction of the amount two jury awards and the propriety of the Subject Judges’ findings and conclusions in resolving post-judgment motions, will soon be before the Court of Appeals. It would be wholly inappropriate to consider those legal claims in the course of this administrative judicial misconduct proceeding. 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 must be 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.

Apart from disputing decisions and rulings rendered by the Subject Judge, Complainant also identifies several statements that allegedly reflect bias on the part of the

Subject Judge. First, Complainant states that, during a settlement conference in 2013, the Subject Judge stated, “If the [police department] is treating you so badly why don’t you just quit and find somewhere else to work?” Complainant contends this reflects “a lack of concern and sensitivity” and provided “a clear signal . . . that he should not be presiding over my case.” Next, Complainant alleges that, just before the jury’s second verdict was read, the Subject Judge stated off the record to Complainant’s counsel, “You don’t show up all week, but you show up today?!” and “What are you going to have his wife testify to?!” According to Complainant, these statements demonstrate a “double standard” because the Subject Judge did not address defense counsel in the same manner on occasions when he was not present, and did not ask if the spouses of the defendants would be testifying on their behalves. Finally, Complainant notes that the Subject Judge referred to the second jury award as a “very generous award” prior to ordering remittitur.² Complainant argues that this “characterization of the jury’s final determination clearly shows a prejudice against me.”

Some of these alleged remarks were not made on the record and therefore cannot be directly verified. The Subject Judge indicates in his response that he may have made comments of this general nature, although he did not remember specifically.³ I therefore

² Upon review of the transcript, the Subject Judge did not use the phrase “very generous award.” Rather, he referred to “quite healthy awards.” The remark was made in the context of a discussion with counsel concerning the legal propriety of the amount of the jury’s award.

³ The Subject Judge states, for instance, that it is his practice to encourage parties involved in settlement discussions in employment discrimination suits to consider a settlement in

will assume for purposes of this opinion that the Subject Judge made the comments substantially as alleged.

So assuming, the remarks do not constitute conduct “prejudicial to the effective and expeditious administration of the business of the courts.” Rule 3(h)(1), Rules for Judicial-Conduct and Judicial-Disability Proceedings (defining cognizable misconduct). While Complainant felt personally offended by the comments, they are neither objectively inappropriate nor hostile. Moreover, the Subject Judge confirms that he did not make any such statements for an improper purpose.

“[E]xpressions of impatience, dissatisfaction, annoyance, and even anger” arising during ordinary efforts at courtroom administration do not establish bias or partiality, unless they reveal such a high degree of antagonism or favoritism as to make fair judgment impossible. See Liteky v. United States, 510 U.S. 540, 555-56 (1994); see also United States v. Wecht, 484 F.3d 194, 220 (3d Cir. 2007) (same). I conclude that the alleged statements here do not reflect favoritism or antagonism, and do not rise to the level of demonstrably egregious and hostile treatment constituting judicial misconduct under Rule 3(h)(1)(D), Rules for Judicial-Conduct and Judicial-Disability Proceedings.

Accordingly, these allegations are dismissed as unsupported by evidence that would raise

which the plaintiff resigns in return for a more substantial settlement amount. This general practice could have prompted a statement akin to the alleged question “why don’t you just quit and find somewhere else to work?” that Complainant attributes to the Subject Judge.

an inference that misconduct has occurred.⁴ 28 U.S.C. § 352(b)(1)(A)(iii); Rule 11(c)(1)(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) and (iii).

s/ Theodore A. McKee
Chief Judge

⁴ While not dispositive of the issue, it is nonetheless notable that the allegedly egregious comments described by Complainant did not prompt Complainant's counsel to seek the Subject Judge's recusal from the case.

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ORDER

(Filed: January 15, 2016)

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 clerk of the court of appeals within **42 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: January 15, 2016