

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. No. 03-15-90105

IN RE: COMPLAINT OF JUDICIAL MISCONDUCT
OR DISABILITY

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

MEMORANDUM OPINION

(Filed: February 19, 2016)

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 (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, a pro se litigant, filed a complaint against two banks in state court concerning the banks' refusal to extend him a loan. The defendants removed the matter to federal court and the case was assigned to the Subject Judge. Complainant moved to remand the matter to state court and the defendants moved to dismiss the complaint. Complainant did not respond to the motion to dismiss and the Subject Judge granted the motion as uncontested. Complainant appealed the dismissal. The Court of Appeals summarily affirmed the judgment on different grounds.

In this complaint of judicial misconduct, Complainant recounts the procedural history of his case and argues that the Subject Judge failed to address certain legal issues before him, including whether the removal to federal court was proper and "whether this federal court has jurisdiction over this matter." Complainant contends that the Subject Judge's dismissal of his complaint was improper because it "skirted the Motions for jurisdiction." Complainant queries whether the lack of a ruling on the question of jurisdiction can constitute "effective and expeditious administration of the business of the Courts."

These allegations reflect nothing more than Complainant's disagreement with the merits of the Subject Judge's decision to dismiss his complaint without expressly ruling on Complainant's jurisdictional arguments. The allegations are therefore 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."). Merits-related allegations do not constitute

cognizable misconduct under the Judicial Conduct and Disability Act. 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 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).

Complainant pursued an appeal of the Subject Judge's dismissal of his complaint, and raised all of these same arguments concerning jurisdiction in that appeal. Indeed, this complaint of judicial misconduct is nearly identical to the written argument he filed in support of his appeal. The Court of Appeals did not find merit in Complainant's legal arguments. This administrative proceeding does not provide another bite at the apple. 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).

Because this complaint is entirely merits-related, it is dismissed pursuant to 28 U.S.C. §§ 352(b)(1)(A)(ii).

s/ Theodore A. McKee
Chief Judge

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ORDER

(Filed: February 19, 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).

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: February 19, 2016