

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. No. 03-16-90004

IN RE: COMPLAINT OF JUDICIAL MISCONDUCT
OR DISABILITY

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

MEMORANDUM OPINION

(Filed: March 7, 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 (hereinafter “Subject Judge”). For the reasons discussed below, the complaint will be dismissed.¹

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). The “misconduct

¹ Complainant previously filed two prior complaints of judicial misconduct against the same District Judge who is the subject of the present complaint. Those complaints were dismissed as frivolous and merits-related. J.C. Nos. 03-14-90086 and 03-14-90094.

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).²

By way of background, in 2007, Complainant filed a civil rights complaint in which he claimed to have been physically assaulted by prison personnel. The case was assigned to the Subject Judge. After a lengthy procedural history, the case proceeded to a three-day jury trial at which Complainant appeared *pro se*.³ In 2013, the jury returned a verdict in favor of the defendants and the Subject Judge entered judgment accordingly. Complainant appealed and the Court of Appeals affirmed the judgment.

In 2014, Complainant filed a new civil rights complaint alleging malicious prosecution with respect to a more recent arrest. The matter was also assigned to the Subject Judge. The Subject Judge granted Complainant leave to proceed *in forma pauperis*, dismissed some claims, determined that one claim should proceed, and directed that the complaint be served upon the remaining defendant. Complainant moved for a default judgment, which the Subject Judge denied without prejudice reasoning that, even

² As a preliminary matter, Complainant makes allegations concerning individuals and entities who are not subject to the Judicial Conduct and Disability Act; e.g., the U.S. Marshals service and a defendant. 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.

³ The Subject Judge had granted Complainant *pro bono* counsel but, at Complainant's request, the representation was terminated prior to trial.

if Complainant was able to establish proper service, Complainant had not pled facts in support of each element of a claim for malicious prosecution. The matter remains pending.

Similarly to one of his prior complaints of judicial misconduct, Complainant alleges that, in the 2007 civil rights proceeding, the Subject Judge “wouldn’t allow” a picture of Complainant’s eye injury to be presented to the jury. Complainant also complains that he requested free transcripts, but that the Subject Judge has not “signed off” for him to receive them. In addition, Complainant contends that the Subject Judge had “no valid reason to dismiss” his motion for default judgment filed in his current civil action and is trying to “indirectly sabotage” his case.

It is clear that Complaint is attempting to challenge the merits of the Subject Judge’s decisions. “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 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.

In any event, the record does not support Complainant’s allegations of judicial misconduct. As I concluded in the opinion dismissing J.C. Nos. 03-14-90086 and 03-14-90094, the Subject Judge did not order a photograph to be excluded from consideration by the jury. Rather, it appears that no photograph was ever offered into evidence and the jury therefore was unable to consider a photograph. Complainant, moreover, raised allegations

concerning his efforts to present medical records and pictures in the course of his unsuccessful appeal.

Complainant also raised a question regarding his entitlement to transcripts on appeal. A Third Circuit panel concluded that Complainant, “neither paid the court reporter to produce the transcript nor moved for relief under § 753(f). In fact, even after Appellees highlighted this failure to do so in their merits brief, [Complainant] did not file a reply or take any other action.” This administrative proceeding does not permit Complainant an opportunity to re-litigate this claim.

Finally, Complainant alleges that the Subject Judge dismissed the jury on September 26, 2013, “with no explanation to Sheriff to remove me from Court like I was a piece of trash” Although this statement is unclear, it appears that Complainant is complaining that the jury was dismissed without explanation. The docket, however, reflects that on the date of the incident complained of, the trial was completed and the jury had rendered its verdict. Accordingly, it is self-evident that the jury was dismissed because the trial was over. Complainant does not explain why his removal from the courtroom at the conclusion of the trial was akin to treating him like “trash.” In any event, there is no evidence that the Subject Judge directed the Sheriff to treat Complainant improperly in any way or that Complainant was, in fact, mistreated by the Subject Judge. Complainant’s allegations are dismissed as frivolous and unsupported by any evidence that would 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.

Given the frivolous and merits-related nature of Complainant's current and prior allegations, his attention is directed to Rule 10(a), Rules for Judicial-Conduct and Judicial-Disability Proceedings.⁴ Future abuse of the misconduct procedures could result in the imposition of sanctions under that rule.

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

⁴ Rule 10(a), Rules for Judicial-Conduct and Judicial-Disability Proceedings, states:

(a) 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, the 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.

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ORDER

(Filed: March 7, 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)(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: March 7, 2016