

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. No. 03-16-90039

IN RE: COMPLAINT OF JUDICIAL MISCONDUCT
OR DISABILITY

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

MEMORANDUM OPINION

(Filed: August 10, 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 Circuit 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 frequent pro se litigant before the Court of Appeals, was enjoined more than a decade ago from filing any new matter raising certain specified claims

without prior authorization of the Court. Since the injunction was entered, Complainant has sought permission numerous times. Permission has not been granted. In 2015, Complainant again sought such permission. In February 2016, the Subject Judge issued an order denying permission, imposing a monetary sanction due to Complainant's filing of "repetitive, frivolous motions," and barring him from seeking permission to proceed on certain claims until 2018. Complainant paid the monetary sanction. Although he has attempted to file additional documents, the Clerk advised that the documents are subject to the February 2016 order and will not be docketed prior to 2018.

In this complaint of judicial misconduct, Complainant alleges that the Subject Judge engaged in judicial misconduct and violated his constitutional rights by issuing the February 2016 order. Complainant further alleges the Subject Judge "acted with judicial disability when he failed to conform to the requirements of the federal constitution and laws of the United States." Complainant contends that the February 2016 order constitutes "arbitrariness, falsity, extortion, capriciousness, fraud, malice, trickery, RICO, racketeering, pattern of racketeering activity, deceit, misrepresentation, highway robbery and conspiracy. . . ."

Complainant's allegations seek to collaterally challenge the Subject Judge's order barring Complainant from pursuing further Court filings until February 2018. Such allegations clearly are merits-related. "An allegation that calls into question the correctness of a judge's ruling, including a failure to recuse, without more, is merits-related." Rule 3(h)(3)(A), Rules for Judicial-Conduct and Judicial-Disability Proceedings.

Merits-related allegations are beyond the scope of a judicial misconduct proceeding and, indeed, this administrative forum does not provide a back door through which Complainant may pursue filings that are otherwise barred by Court Order. 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 the allegations do not constitute cognizable misconduct, they 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.

Complainant’s remaining litany of allegations are both unexplained and unsubstantiated. The record provides no support for any claim that the Subject Judge has engaged in misconduct or suffers from a disability. Accordingly, Complainant’s remaining allegations are subject to dismissal as frivolous and unsupported by 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.

Based on the foregoing, the complaint is dismissed pursuant to 28 U.S.C. §§ 352(b)(1)(A)(ii) and (iii).

s/ Theodore A. McKee

Chief Judge

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ORDER

(Filed: August 10, 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 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: August 10, 2016