

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. No. 03-13-90046

IN RE: COMPLAINT OF JUDICIAL MISCONDUCT
OR DISABILITY

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

MEMORANDUM OPINION

Filed: September 6, 2013

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 Bankruptcy 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).

Complainant is a former employee of an entity that has filed for Chapter 11 bankruptcy. He contends that he and a second employee were wrongfully terminated. On

behalf of himself and the second employee, Complainant filed several pro se motions in the Bankruptcy Court, requesting that the Subject Judge forward the wrongful termination claims to the District Court for separate consideration. The Subject Judge denied the request to forward the claims to the District Court. Complainant then filed a Complaint under the Judicial Conduct and Disability Act, 28 U.S.C. §§351-64, against the Subject Judge, which was dismissed on March 20, 2013 pursuant to 28 U.S.C. §§352(b)(1)(A)(ii) and (iii). See J.C. No. 03-13-90001.

In the instant judicial misconduct complaint, Complainant once again attempts in this administrative forum to re-argue the same motions he presented to the Subject Judge. Clearly, Complainant's allegations reflect a basic disagreement with the Subject Judge's denial of his request to forward his claims to the District Court. Complainant states in his complaint, "[b]y failing to forward our cases before the Secretary of Labor to the district court for withdrawal consideration under 28 USC 157(d) and Rule 5011-1, [the Subject Judge] and the Bankruptcy Court ... have, in effect, made a withdrawal of reference decision that is reserved to the district court. This clearly defies the intent of Congress."

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). Complainant's merits-related allegations are not cognizable under the Judicial Conduct and Disability Act. 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 the merits-related claim, Complainant alleges, “[b]y failing to forward our cases before the Secretary of Labor to the district court for withdrawal consideration under 28 U.S.C. 157(d) and Rule 5011-1, [the Subject Judge] and the Bankruptcy Court ... have taken my withdrawal of reference application fee money under a false pretense.” Complainant contends that the Subject Judge somehow obtained or misused a filing fee. Complainant questions, “What have [the Subject Judge] and the Bankruptcy Court ... done with my withdrawal of reference application fee money?”

The record has been reviewed and there is no basis for concluding that the Subject Judge acted improperly. Regarding Complainant’s vague insinuations of a misuse of funds, I note that judges do not assess docketing fees. Docketing fees are due to the Clerk of Court. These administrative fees are not paid to judges. There is no evidence whatsoever that the Subject Judge had any access to Complainant’s docketing fee. Accordingly, these claims 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.

Furthermore, as noted above, Complainant filed a prior complaint of misconduct which was dismissed as merits-related and unsupported by evidence that would raise an inference of misconduct. See J.C. No. 03-13-90001. Accordingly, Complainant’s attention is directed to Rule 10(a), Rules for Judicial-Conduct and Judicial-Disability

Proceedings. Future abuse of the misconduct procedures could result in the imposition of sanctions under that rule.¹

In summary, Complainant's allegations are frivolous, lack sufficient evidence to raise an inference that misconduct has occurred, and are not cognizable under the Judicial Conduct and Disability Act. See 28 U.S.C. 352(b)(1)(A)(ii), (iii); Rule 11(c)(1)(B),(C),(D), Rules for Judicial-Conduct and Judicial-Disability Proceedings. Accordingly, the complaint is dismissed.

/s/ Theodore A. McKee
Chief Judge

¹ 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, a 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: September 6, 2013

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 of the Court of Appeals within **35 days** of the date on the letter informing the parties of the Chief Judge's order.

18(b) Form. The petition should be in letter form, addressed to the Circuit Executive 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 Office of the Circuit Executive 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: September 6, 2013