

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. No. 03-13-90069

IN RE: COMPLAINT OF JUDICIAL MISCONDUCT
OR DISABILITY

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

MEMORANDUM OPINION

Filed: December 4, 2013

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 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 filed a pro se civil rights complaint accompanied by a motion for leave to proceed in forma pauperis (“IFP”). The Subject Judge denied the motion on the

ground that Complainant had sufficient funds to pay the District Court's filing fee, and closed the case without prejudice to reopening should Complainant pay the fee.¹

Complainant paid the fee and her case was reinstated.

After reinstatement, Complainant filed a number of motions. Among others, she filed several motions requesting changes to the docket, including the deletion of the names of terminated defendants and deletion of Complainant's address and personal information. The Subject Judge denied the motions. In addition, Complainant filed motions to recuse the Subject Judge, which the Subject Judge also denied. Complainant's case remains pending before the Subject Judge.

In this complaint of judicial misconduct, Complainant states, "I am proceeding with my Complaint regarding this judge because his behavior does not appear to be consistent with that of a Federal Judge who is neutral and objective in hearing both side of a case." Specifically, Complainant alleges that, "in refusing to correct or amend the Docket," the Subject Judge has acted in a manner that "appear[s] to be obstructive, delaying, and oppressive in his administration of the case. . . ." Complainant alleges that she "feels that the Judge's attitude is dismissive of her complaint and protective of corruption by these [defendant] institutions." Complainant further alleges that "she has asked the Judge to

¹ Complainant filed an appeal from the Subject Judge's decision denying IFP status. She sought leave to proceed IFP on appeal. The Court of Appeals granted the IFP motion, noting that the financial information that Complainant provided on appeal differed from that which she had provided to the District Court. The Court of Appeals affirmed the Subject Judge's decision and dismissed the appeal, concluding there was no abuse of discretion.

recuse himself. He has refused. However his errors and apparent lack of respect for her as the Plaintiff who in this case is representing herself is continuing to harm her case.”

Complainant requests that her case be reassigned to “a neutral and qualified judge.”

It is apparent that Complainant disagrees with decisions and rulings rendered by the Subject Judge in the course of her case, including the decisions to deny her motions to delete information from the public docket and her motions for the Subject Judge’s recusal. “An allegation that calls into question the correctness of a judge’s ruling . . . is merits-related.” Rule 3(h)(3)(A), Rules for Judicial-Conduct and Judicial-Disability Proceedings. Clearly, Complainant’s allegations are merits-related.

Merits-related allegations are not cognizable as 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. 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 Complainant’s allegations are not cognizable in this proceeding, they are subject to dismissal.

In addition, Complainant alleges that the Subject Judge harbors a bias against her, contending that he denied her motions because she “is African-American, a disabled female and a senior.” Complainant’s argues that the Subject Judge’s rulings are

“humiliating to her and extremely prejudicial to her case” and are both “patronizing and demeaning.”

Complainant offers no support for these allegations, however, apart from her disagreement with the decisions and rulings themselves. The record reveals that the Subject Judge’s orders are written in an appropriate, respectful, and professional tone, and do not provide evidence of an “attitude . . . [that is] patronizing and demeaning” as Complainant alleges. Accordingly, to the extent they are not merits-related, Complaint’s claims of bias are dismissed 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.

For the foregoing reasons, this complaint is dismissed pursuant to 28 U.S.C. § 352(b)(1)(A)(ii) and (iii).²

/s/ Theodore A. McKee
Chief Judge

² After filing the initial complaint, Complainant filed a supplemental document containing allegations not made under penalty of perjury as required by Rule 6, Rules for Judicial-Conduct and Judicial-Disability Proceedings. I have considered these additional allegations under Rule 5 and conclude they do not provide “reasonable grounds for inquiry” into the existence of judicial misconduct. Accordingly, I decline to identify any complaints based upon these allegations

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ORDER

Filed: December 4, 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: December 4, 2013