

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. No. 03-13-90082

IN RE: COMPLAINT OF JUDICIAL MISCONDUCT
OR DISABILITY

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

MEMORANDUM OPINION

(Filed: February 12, 2014)

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).

In October 2012, Complainant filed a pro se civil complaint concerning her allegedly wrongful eviction from her apartment.¹ The matter was assigned to the Subject Judge. In August 2013, the Subject Judge granted the defendants' motions to dismiss, but the dismissal order permitted Complainant to seek leave to file an amended complaint. Complainant did not seek leave to amend and, in January 2014, the Subject Judge dismissed the complaint with prejudice. As of this time, Complainant has not filed an appeal.

In this complaint of judicial misconduct, Complainant alleges that, primarily in the course of entering the August 2013 order, the Subject Judge "lied about key facts of the case in order to help Defendants, dismissed my case against two key defendants right before they were supposed to provide me with discovery information, denied me the right to a fair trial, violated the US Constitution, and took bribes from two key defendants." Specifically, Complainant alleges that the Subject Judge "lied" by stating in the description of the facts of the case that Complainant had a legal obligation to pay approximately \$8,000 to one of the defendants pursuant to a state court judgment entered against her. She contends, "[the Subject Judge] states in [the August 2013 order] as FACTS that [the defendant] had the right to burglarize my home of 14 years, change my lock, make me homeless, evict, bar from my co-op that I legally own with a mortgage, take possession of all my personal items in the co-op because I did not pay \$8,133.50 in

¹ Complainant filed a total of three pro se complaints relating to her eviction that were assigned to the Subject Judge. The two other matters remain ongoing. The allegations of misconduct do not specifically pertain to those matters.

legal extortion fee by August 1, 2012, which was not legally due, without any warrant or ownership.”

Complainant’s allegations largely challenge the merits of the Subject Judge’s decisions and rulings rendered in the course of Complainant’s civil case. 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).

Indeed, Complainant filed two motions for the Subject Judge’s recusal in which she raised the same allegations, and those motions were denied. “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 not cognizable as judicial misconduct. These allegations are therefore 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.

In addition, Complainant raises a number of serious but extremely vague allegations against the Subject Judge, including a claim that he “took bribes from two key defendants,” that he is “sabotaging [Complainant’s] case,” and that he is “very racist and corrupt.” Complainant has provided no evidence or explanation to substantiate these claims, apart from her fundamental dissatisfaction with the outcome of her case. The

record reflects no evidence whatsoever of any sort of impropriety. Accordingly, these allegations 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.

Finally, Complainant alleges that “this tiny case has been delay [*sic*] constantly.” A claim of delay in a single proceeding may qualify as cognizable misconduct if “the allegation concerns an improper motive in delaying a particular decision. . . .” Rule 3(h)(3)(B), Rules for Judicial-Conduct and Judicial-Disability Proceedings. As a factual matter, however, it is apparent that there have been no periods of unusual delay in Complainant’s case. Moreover, Complainant has chosen to file numerous submissions with the District Court, which have taken substantial time to resolve. For instance, Complainant filed amended complaints through June 2013. Because it lacks a factual basis, Complainant’s claim of delay is 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, the complaint is dismissed pursuant to 28 U.S.C. §§ 352(b)(1)(A)(ii) and (iii).²

² In addition to the complaint, Complainant filed additional documents 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 allegations under Rule 5 and conclude that they do not provide “reasonable grounds for inquiry” into the

s/ Theodore A. McKee
Chief Judge

existence of judicial misconduct. Accordingly, I decline to identify any complaints based upon these allegations.

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ORDER

(Filed: February 12, 2014)

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 clerk of the court of appeals within **35 days** of the date on the clerk's letter informing the parties of the chief judge's order.

18(b) Form. The petition should be in letter form, addressed to the clerk 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 Clerk’s Office 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: February 12, 2014