

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. Nos. 03-13-90092, 03-13-90093

IN RE: COMPLAINT OF JUDICIAL MISCONDUCT
OR DISABILITY

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

MEMORANDUM OPINION

(Filed: March 31, 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 (“Subject Judge I”) and a United States Magistrate Judge (“Subject Judge II”). 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).

This complaint of judicial misconduct is far from a model of clarity. It appears that Complainant is the business partner of a pro se plaintiff (“the Plaintiff”) who has filed three civil complaints concerning her allegedly wrongful eviction from her home.¹ Complainant is not a party to any of the Plaintiff’s cases. He did, however, file a letter in one case, addressed to Subject Judges I and II, arguing the merits of the Plaintiff’s case and contending that state court judges in related proceedings had made a series of mistakes.

It appears that this misconduct complaint is intended to accompany a request by Complainant directed to “Washington DC,” asking that Subject Judges I and II be impeached because of their actions in the Plaintiff’s civil proceedings. In the statement accompanying the misconduct complaint, Complainant writes, “I have no words for [Subject Judge I] but will speak once the Senate asked why this Judge should be Removed from his position.” Complainant does not elaborate the grounds for this impeachment request, but essentially alleges that the Plaintiff’s case speaks for itself. Complainant states, “[the Plaintiff’s case] has over 6,170 pages and is conformed of 71 complaints we should agree on this once the Senate reads all the facts knowing how [the Plaintiff’s] rights have been violated. . . .”

¹ The Plaintiff also filed three complaints of judicial misconduct concerning her civil proceedings. The first, filed against Subject Judge I, was dismissed as merits-related, frivolous, and unsupported. See J.C. No. 03-13-90082. The second and third, which name Subject Judge II and a different Subject Judge, are pending at this time. See J.C. Nos. 03-14-90003; 03-14-90006.

With regard to Subject Judge II, Complainant alleges that “I am having no qualms with [Subject Judge II] but in my humble opinion she is not skilled enough for the position. . . .” Complainant further alleges that, on an unspecified occasion when the Plaintiff appeared before Subject Judge II, “the racism or bias attitude was present.” Complainant concludes by stating, “please file my complaint [against] a Judge who is not fair should face congress or the Governor and let them decided [sic] his or her fate.”

As exhibits to the complaint, Complainant attaches copies of five letters written by the Plaintiff (four of which are incomplete), addressed to the Chief Judge of the District Court, an FBI agent, and an assistant attorney general. The Plaintiff’s letters, which are similar in content to the complaint of judicial misconduct that the Plaintiff filed against Subject Judge I, see J.C. No. 03-13-90082, largely concern the merits of her civil cases. In addition, the letters refer to the Plaintiff’s request that her cases be assigned to a judge other than Subject Judges I and II, her allegation that Subject Judges I and II are conspiring against her to “dismiss all of my cases,” and her claim that Subject Judges I and II are part of a bigger “major criminal ring that consists of judges, attorneys, law enforcement, banks, [and] mortgage companies” that “steals minorities’ homes and violates U.S. Constitution.”

Complainant also attaches incomplete copies of two letters that he apparently wrote himself. One is directed to the head of a state supreme court and argues the merits of the Plaintiff’s claims. The second, entitled “Formal Complaint,” is directed to the Chief Judge of the District Court and states that Complainant is “in totally opposition” of a

decision rendered by Subject Judge I in one of the Plaintiff's cases. Finally, Complainant attaches a single page from what appears to be one of the Plaintiff's civil complaints.

While the basis for Complainant's complaint is not particularly clear, it appears that Complainant's allegations are based at least in part upon his disagreement with decisions and rulings rendered by Subject Judges I and II in the course of the Plaintiff's civil proceedings. To that extent, Complainant's allegations are merits-related.

"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. Such claims are not appropriately raised in a judicial misconduct proceeding. 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 merits-related allegations are not cognizable in this proceeding, 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.

Apart from his merits-related allegations, Complainant makes bald claims of racism, bias, and incompetence, without meaningful explanation or description of any facts that might support such claims. The series of incomplete letters and documents appended to the complaint do not bear out any of these allegations, and a review of the

record in the Plaintiff's civil proceedings also does not substantiate them. 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.

For the foregoing reasons, the 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 an 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 allegations under Rule 5 and conclude that 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: March 31, 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: March 31, 2014