

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. No. 03-14-90010

IN RE: COMPLAINT OF JUDICIAL MISCONDUCT
OR DISABILITY

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

MEMORANDUM OPINION

(Filed: May 2, 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).

Complainant filed a lengthy pro se civil rights complaint in December 2012. The Subject Judge dismissed the complaint without prejudice for failure to comply with Fed. R. Civ. P. 8(a). Complainant filed an amended complaint, which the Subject Judge

dismissed for the same reason. Complainant continued to file motions seeking leave to amend and to reopen the case, which were denied as futile. Complainant filed a notice of appeal in August 2013 from the last such order. On appeal, the Court of Appeals determined that the Subject Judge erred in concluding that the proposed fourth amended complaint did not comply with Fed. R. Civ. P. 8(a). The Court of Appeals therefore summarily vacated the Subject Judge's order and remanded the matter for further proceedings.

On remand, the Subject Judge reopened the case and permitted Complainant to file a fourth amended complaint. Before the Subject Judge could take any further action in compliance with the Court of Appeals' decision, however, Complainant filed a petition for a writ of mandamus seeking numerous forms of relief, including transfer of his case. The Court of Appeals denied the petition, noting, among other things, that the record "is devoid of any basis on which the District Judge's impartiality could be questioned."¹

In March 2014, Complainant filed a motion in District Court for the Subject Judge's recusal, which the Subject Judge initially denied. Complainant then filed both a notice of appeal and a motion for reconsideration of the decision.² On reconsideration, the Subject Judge decided to grant the recusal motion. The case has been assigned to a new District Judge and remains pending.

¹ Complainant is in the process of seeking a writ of certiorari in the United States Supreme Court to obtain review of the decision by the Court of Appeals.

² The appeal has been listed for possible dismissal due to a jurisdictional defect.

This complaint of judicial misconduct simply attaches a copy of Complainant's motion to recuse the Subject Judge, without further elaboration or explanation. In the motion, Complainant argues that the Subject Judge is biased against him. Complainant recounts the procedural history of his case, quoting portions of the Subject Judge's orders denying leave to amend. Complainant argues that the Subject Judge's tone was "not dignified, not respectful, and definitely not courteous to this litigant. . . ." Complainant further contends that the Subject Judge's legal conclusions, including a conclusion that certain claims were frivolous, "gives [rise to the] appearance of prejudice" and demonstrates the Subject Judge's "biases against the protected class [to which Complainant] belongs 'Moors.'" Complainant also argues the merits of various aspects of his underlying civil rights complaint.

Because Complainant's allegations are based entirely on a motion for recusal that has been addressed on its merits by the Subject Judge, all of the allegations 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 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). Indeed, Complainant already has sought review of the decision by filing a motion for reconsideration, and the Subject Judge granted that motion. These decisions are not subject to collateral review in the context of this administrative proceeding. Accordingly, because the allegations of the complaint are not cognizable as judicial 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.

Moreover, Complainant's claim of bias is entirely unsubstantiated. Contrary to Complainant's allegations, the Subject Judge's orders are consistently professional and appropriate in tone. As the Court of Appeals observed, the record offers nothing to support a claim of bias. Accordingly, the allegations of bias also are subject to dismissal 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).

s/ Theodore A. McKee
Chief Judge

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ORDER

(Filed: May 2, 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: May 2, 2014