

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. Nos. 03-14-90018, 03-14-90019, 03-14-90020, 03-14-90021, 03-14-90022,
03-14-90023, 03-14-90024, 03-14-90025, 03-14-90026, 03-14-90027,
03-14-90028, 03-14-90029, 03-14-90030, 03-14-90031, 03-14-90032,
03-14-90033, 03-14-90034, 03-14-90035

IN RE: COMPLAINT OF JUDICIAL MISCONDUCT
OR DISABILITY

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

MEMORANDUM OPINION

Filed: June 4, 2014

PRESENT: McKEE, Chief Judge.

This complaint is filed under the Judicial Conduct and Disability Act, 28 U.S.C. §§ 351-64, against eighteen United States Circuit Judges (“Subject Judge I” through “Subject Judge XVIII”). 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 the instant complaint, Complainant, a prisoner and pro se litigant, alleges that all eighteen Subject Judges have engaged in a “clear and indisputable pattern of applying 3d Cir. I.O.P. 10.6 in a discriminatory manner to routinely summarily affirm lower court decisions against pro se litigants.”¹ In support of this broad claim, Complainant presents a list of 101 appeals decided between July 2012 and December 2013, which he states “represents 100% of the cases summarily disposed of under 3d Cir. I.O.P. 10.6.”² During this seventeen-month period, Complainant contends, 3d Cir. I.O.P. 10.6 was invoked only in cases involving pro se litigants; he claims that this fact alone demonstrates that the rule is applied in a discriminatory manner. Complainant argues that 3d Cir. I.O.P. 10.6 has “the effect of shutting pro se litigants out of court without the appellate review required and intended by 28 U.S.C. § 1291 and Article III, sec. 2, cl. 1 of the Constitution of the

¹ 3d Cir. I.O.P. 10.6 provides:

The court, sua sponte or upon motion by a party, may take summary action affirming, reversing, vacating, modifying, setting aside, or remanding the judgment, decree or order appealed from; granting or denying a petition for review; or granting or refusing enforcement of the order of an administrative agency if it clearly appears that no substantial question is presented or that subsequent precedent or a change in circumstances warrants such action. Before taking summary action, the court will afford the parties an opportunity to submit argument in support of or in opposition to such disposition if briefs on the merits have not already been filed. Summary action may be taken only by unanimous vote of the panel. If a motion panel determines that summary action is not appropriate at that time, it may, in lieu of denial, refer the matter to the merits panel without decision and without prejudice.

² A number of the appeals included on Complainant’s list were not dismissed under 3d Cir. I.O.P. 10.6. Seven were dismissed as frivolous pursuant to 28 U.S.C. §1915(e), three were appeals in which the District Court’s decision was summarily vacated and the case was remanded for further proceedings, and one was fully briefed.

United States.” Thus, Complainant contends, the procedural rule should be abrogated or, in the alternative, be modified in several respects.

In large measure, Complainant’s allegations are merits related. While Complainant does not identify a specific decision by a particular Subject Judge that he believes was legally incorrect, it is clear that he sweepingly challenges the validity of every dismissal rendered pursuant to 3d Cir. I.O.P. 10.6 that was adverse to a pro se litigant. This administrative proceeding does not, however, provide an opportunity to seek review of the merits of these decisions. Indeed, in many of the cases on Complainant’s list, the litigants sought review of the merits of the decisions in their cases by filing a petition for rehearing and/or a petition for a writ of certiorari to the United States Supreme Court. 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).

“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. Merits-related disputes do not constitute cognizable 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. Because Complainant’s merits-related allegations 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.

Apart from the merits-related allegations challenging the validity of dismissals under 3d Cir. I.O.P. 10.6, it is readily apparent that Complainant has provided nothing whatsoever to substantiate any claim of bias on the part of any of the eighteen Subject Judges. Accordingly, any remaining allegations are subject to dismissal as 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)(D), Rules for Judicial-Conduct and Judicial-Disability Proceedings.

Finally, it is clear that Complainant is attempting to employ the judicial misconduct procedures as a means to illustrate what he views as an inherent bias in the procedural rules of the Court of Appeals. A judicial misconduct proceeding simply is not the appropriate forum for challenging a rule of a court. Because allegations disputing the legitimacy of a court's rules of procedure do not set forth a claim of cognizable judicial misconduct, they are subject to dismissal for this reason as well. See Rule 3(h), Rules for Judicial-Conduct and Judicial-Disability Proceedings (defining cognizable misconduct); 28 U.S.C. § 352(b)(1)(A)(i).

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: June 4, 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: June 4, 2014