

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. Nos. 03-14-90038, 03-14-90039

IN RE: COMPLAINT OF JUDICIAL MISCONDUCT
OR DISABILITY

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

MEMORANDUM OPINION

(Filed: September 4, 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 Circuit 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).

Complainant was a pro se plaintiff in a civil rights action before Subject Judge I. After more than a year of proceedings, Subject Judge I entered a detailed memorandum opinion and order granting summary judgment to the defendants and closing the case. In the course of that case, Complainant filed motions for Subject Judge I's recusal. She declined to recuse.

In response to the judgment, Complainant filed a new complaint arguing that evidence presented by the defendants in the first proceeding was a "sham." The complaint also was assigned to Subject Judge I, who dismissed it for lack of subject matter jurisdiction and on grounds of res judicata. Complainant moved for reconsideration, which Subject Judge I denied.

Complainant then filed an appeal and a petition for a writ of mandamus. In the appeal, a three-judge panel including Subject Judge II affirmed Subject Judge I's decisions. Complainant filed a motion to stay the mandate and a petition for rehearing. As the petition was not timely filed, the Court of Appeals directed Complainant to file a motion for leave to file the petition for rehearing out of time. Subject Judge II issued an order denying both the motion to stay the mandate and for leave to file an untimely petition for rehearing. In the mandamus proceeding, a different three-judge panel concluded that mandamus relief was not warranted because Complainant had not shown any reason for Subject Judge I to recuse herself.

In this lengthy, rambling, and disjointed complaint of judicial misconduct, Complainant offers numerous arguments as to why, in his view, the Subject Judges'

decisions in his cases were “arbitrary and capricious,” “depart[ed] from precedent,” and constituted a denial of due process and other constitutional protections. Complainant attaches numerous court documents, which he has annotated with his allegations of misconduct and arguments about the merits of his claims. Among other things, Complainant argues that Subject Judge I wrongly failed to recuse herself when she was “mandatorily disqualified,” and that her decisions subsequent to the denial of the recusal motions, including her decision to grant summary judgment to the defendants in his first case, are therefore “VOID.” Complainant further argues that Subject Judge II “knowingly and corruptly obstructed, influenced, and impeded an official proceeding” by denying Complainant’s motion to file a petition for rehearing out of time because, in Complainant’s assessment, the petition was timely filed. Complainant argues that the error is of such magnitude that it “presupposes that a judge acted willfully or that he/ she is incompetent.”

Throughout the complaint, Complainant repeatedly refers to both Subject Judges as “racist bigots” and accuses them of denying him his constitutional rights. His language is inappropriate, abusive, and threatening in tone. Complainant states, for example that “You judges are human waste; you have no integrity, ethics, morals or decency, you demonstrate the very definition of racist bigots, no better than the Clippers owner; you are filthy lying pigs.” He later exclaims, “Go to Hell Racist Bigots!”

Complainant demands that Subject Judge I “be reprimanded and or voluntarily resign from the bench, or . . . impeached as prescribed by Congress” and states that

Subject Judge II “is clearly a racist and he is not fit to be a Federal Judge. Quite frankly, he should retire and fine somewhere and expire. [Subject Judge II], you re both a tyrant and a bully you have clearly abused your power.”

Offensive rhetoric aside, it is clear that the majority of this complaint is concerned with Complainant’s disagreement with decisions rendered by the Subject Judges in the course of his proceedings. “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. 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. Indeed, many of allegations already were presented to the Court of Appeals in Complainant’s merits appeal and mandamus petition. This administrative proceeding does not permit Complainant another opportunity to collaterally challenge the same decisions.

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). Accordingly, Complainant’s merits-related allegations 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.

When considered apart from his merits-related allegations, Complainant has offered nothing whatsoever to support his claims of racism, bigotry, and the like. Complainant's statements amount to nothing more than insult and invective and are not worthy of further discussion. They are dismissed. 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).¹

s/ Theodore A. McKee
Chief Judge

¹ After filing the initial 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 existence of judicial misconduct. Accordingly, I decline to identify any complaints based upon these allegations.

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ORDER

(Filed: September 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: September 4, 2014