

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

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J.C. No. 03-14-90043

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IN RE: COMPLAINT OF JUDICIAL MISCONDUCT  
OR DISABILITY

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

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MEMORANDUM OPINION

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(Filed: September 29, 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, represented by retained counsel, filed a complaint of racial discrimination against his former employer. Upon motion by the defendant, the matter

was transferred to a different District Court and was assigned to the Subject Judge. After an unsuccessful mediation effort, the parties proceeded to prepare for trial. On the eve of trial, the parties were referred to a second mediation. The docket indicates that the parties reached a settlement.

This complaint of judicial misconduct is largely focused on re-arguing the merits of the underlying complaint of discrimination against Complainant's former employer. Complainant argues, for instance, that "[the defendant company] terminated six African-American men with 20 years or more in a seven year span from 2006-2012, while white employees with similar years of experience were able to retire from the company without disgrace." He further contends that "I should not have been suspended or terminated for any of my actions." Complainant also appends certain documents that allegedly establish his claims of wrongful termination.

This administrative proceeding does not provide Complainant an opportunity to re-litigate the complaint he previously filed in the District 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). Moreover, a private company is not covered by the Judicial Conduct and Disability Act. See 28 U.S.C. §§ 351, 352(b)(1)(A)(i); Rule 4, Rules for Judicial-Conduct

and Judicial-Disability Proceedings. Accordingly, to the extent Complainant alleges wrongdoing by his former employer, the allegations will not be considered in this opinion

In addition, many of the allegations implicate Complainant's retained counsel rather than the Subject Judge. For instance, Complainant alleges that counsel "attempt[ed] to settle my case . . . without asking me to attend," and, later, that counsel "pleaded for me to settle and I agreed." This judicial misconduct proceeding is not the appropriate forum for such claims, as a private attorney also is not covered by the Judicial Conduct and Disability Act. Accordingly, these allegations will not be addressed. See 28 U.S.C. §§ 351, 352(b)(1)(A)(i); Rule 4, Rules for Judicial-Conduct and Judicial-Disability Proceedings.

Complainant does raise several allegations concerning the Subject Judge's role in the case. Complainant states, for example, that the Subject Judge "reduced" the issues for trial and "did not allow damages, discrimination or wrongful termination; even though witnesses, and evidence and facts proved strongly in my favor." In addition, Complainant raises a number of allegations concerning the second mediation and the resulting settlement. Among other things, Complainant complains that, during the week prior to the anticipated trial date, "nothing was accomplished" and "[a]ll contact was made via telephone" rather than "on official letterhead." In addition, Complainant alleges that the Subject Judge accepted as true statements made by the defense, although "[n]one of the information in the court summary is true." Finally, Complainant alleges that he was not initially inclined to agree to a settlement, but at the preliminary trial hearing, "I could see

how my case was taken apart. I watched the Judge dismiss witnesses and evidence from my trial that would have upheld my innocence.” Complainant concludes that he was “forced to accept a settlement” rather than proceed to trial on the limited claims that remained pending.

These allegations largely challenge decisions and rulings rendered by the Subject Judge, such as the decisions to dismiss certain claims from the case and to exclude certain witnesses and evidence from trial. They are therefore merits-related. Rule 3(h)(3)(A), Rules for Judicial-Conduct and Judicial-Disability Proceedings (“An allegation that calls into question the correctness of a judge’s ruling . . . without more, is merits-related.”). Merits-related allegations are not cognizable misconduct under the Judicial Conduct and Disability Act. See 28 U.S.C. § 352(b)(1)(A)(ii) (chief judge may dismiss a complaint if he or she finds that it is directly related to the merits of a decision or procedural ruling); Rule 11(c)(1)(B), Rules for Judicial-Conduct and Judicial-Disability Proceedings (a complaint must be dismissed in whole or in part to the extent that the chief judge concludes that the complaint is directly related to the merits of a decision or procedural ruling). Accordingly, Complainant’s merits-related allegations are dismissed.

To the extent Complainant’s allegation that he “was forced to accept a settlement on the table” is intended to imply some sort of inappropriate conduct on the part of the Subject Judge, Complainant fails to provide anything to support such a claim. It is well within a judge’s case management authority to encourage settlement discussions. See, e.g., Code of Conduct for United States Judges, Commentary on Canon 3A(4) (“A judge

may encourage and seek to facilitate settlement but should not act in a manner that coerces any party into surrendering the right to have the controversy resolved by the courts.”<sup>1</sup>

Complainant was represented by counsel during the settlement process, and he makes no allegation that he was coerced by the Subject Judge into inappropriately surrendering any rights. See Commentary on Canon 3A(4). Accordingly, these allegations 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)(i), (ii), and (iii).

s/ Theodore A. McKee  
Chief Judge

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<sup>1</sup> The Code of Conduct for United States Judges is designed to provide guidance to judges, but is not a set of disciplinary rules. “Ultimately, the responsibility for determining what constitutes misconduct under the statute is the province of the judicial council of the circuit subject to such review and limitations as are ordained by the statute and by these Rules.” Commentary on Rule 3, Rules for Judicial-Conduct and Judicial-Disability Proceedings.

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ORDER

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(Filed: September 29, 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)(i), (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](http://www.ca3.uscourts.gov).

s/ Theodore A. McKee  
Chief Judge

Dated: September 29, 2014