

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. No. 03-14-90051

IN RE: COMPLAINT OF JUDICIAL MISCONDUCT
OR DISABILITY

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

MEMORANDUM OPINION

Filed: July 16, 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).

In November 2013, Complainant, a private citizen acting on behalf of himself and a community group, filed a motion for leave to intervene in a case pending before the Subject Judge. As Complainant accurately describes it, the proceeding in question “is a

case challenging the constitutionality of a statute, that is closely watched by the citizenry and the nation.” After full briefing on the issue, in February 2014, the Subject Judge issued a thorough memorandum opinion and order denying the motion. Complainant sought reconsideration. The Subject Judge denied the motion and terminated Complainant’s electronic filing privileges. When Complainant proceeded to file another motion for leave to intervene, the Subject Judge issued an order denying the motion and directing the District Court Clerk “to return any future filings by [Complainant] to him upon receipt.” Shortly thereafter, Complainant attempted to file another document, apparently in an effort to initiate an appeal. The document was initially added to the District Court docket, but it was later deleted from the docket with an annotation indicating that the deletion was pursuant to the Subject Judge’s order. Complainant then filed in the Court of Appeals a “motion to appeal” from the denial of reconsideration and later, when the Subject Judge entered a final decision in the proceeding, a second appeal. Both of Complainant’s appeals are pending.

In this complaint of judicial misconduct, Complainant alleges that the Subject Judge “has acted in ways prejudicial to the effective and expeditious administration of the business of the courts, and has done so as evident to the populace at large, and at the same time to be prejudicial, egregiously in error, and obdurate.” Specifically, Complainant alleges that, by entering the order directing the return of Complainant’s filings, the Subject Judge is attempting to interfere with Complainant’s access to the appeal process with “an intent of obstruction,” because Complainant otherwise would have an allegedly “strong

likelihood of appeal.” Complainant contends that “by entry of said order and all subsequent acts, [the Subject Judge] openly obstructs the pathway to appeal and due process review, this despite lack of any frivolous or unsupported documents nor any finding of same.” Complainant surmises that the Subject Judge’s goal is “to bring the effects of his order into unappealable unchallenged state that would thus become strong law and precedent. . . .”

Clearly, the complaint reflects Complainant’s disagreement with the Subject Judge’s order that his filings be returned. A disagreement with an order is a merits-related claim, see Rule 3(h)(3)(A), Rules for Judicial-Conduct and Judicial-Disability Proceedings, which does 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.

This proceeding is not the appropriate forum for collaterally attacking the Subject Judge’s order. 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). If Complainant wishes to challenge the order on its merits, he should do so in the context of his pending appeals.

Apart from his disagreement with the merits of the decision itself, Complainant offers nothing to support his theory that the Subject Judge’s order is attributable to an

improper motive, and nothing to support this theory is apparent from the record.

Accordingly, Complainant's 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.

For the foregoing reasons, this 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: July 16, 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: July 16, 2014