

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. Nos. 03-14-90065, 03-14-90066, 03-14-90067

IN RE: COMPLAINT OF JUDICIAL MISCONDUCT
OR DISABILITY

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

MEMORANDUM OPINION

(Filed: October 22, 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 two United States Circuit Judges (“Subject Judge II” and “Subject Judge III”). 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's daughter, through counsel, filed a wrongful death action in her role as Complainant's "power of attorney." The complaint sought redress for the alleged wrongful death of Complainant's son, who had been a federal inmate. The daughter's counsel withdrew and she proceeded pro se. Subject Judge I granted summary judgment to the defendant and Complainant's daughter appealed. A panel of the Court of Appeals including Subject Judges II and III concluded that Complainant's daughter should not have been permitted to proceed pro se. Accordingly, the panel vacated Subject Judge I's decision and remanded the matter for further proceedings.

Subject Judge I reopened the case and terminated the daughter as a plaintiff, as she was unable to obtain counsel. Complainant joined the case and proceeded pro se. The matter was later reassigned to a new District Judge, who dismissed the complaint. Complainant appealed. A panel of the Court of Appeals including Subject Judge III affirmed the decision.

In this complaint, Complainant alleges that his "CLAIM OF MISCONDUCT is based on the fact that as the parent I had LEGAL STANDING according to [state] Law and Statutory Right to file And recover damages for my son's death. . . ." In addition, Complainant alleges that he was "left unprotected" because, after his daughter's attorney withdrew from the representation, "substitute counsel was never appointed and that Should be investigated." Complainant contends that, after Subject Judge I's decision was vacated and the matter was remanded to District Court, "[Subject Judge I] still refused To

revisit the counsel request to withdraw or appoint a substitute counselor. Now they are repeating the same actions again. Refusal to address my Legal Standing as the parent.”

In addition, Complainant alleges that, “as a result of their decision [on appeal], [Subject Judges II and III] are in Violation of Title 18, USC; Section 242, Deprivation of Rights under color of Law. Their conduct was prejudiced [*sic*] to the effective and expeditious administration Of the business of the court.” Complainant further alleges that “[b]y refusing to grant the Hearing and rehearing this what has occurred. [*sic*] Two Federal Laws have Been violated and this is grounds for Judicial Misconduct.”

This complaint of judicial misconduct clearly attempts to challenge decisions rendered by the Subject Judges in the course of Complainant’s wrongful death action and associated appeals. Such 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.

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). 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.

Apart from the merits-related allegations, Complainant presents vague allegations including "abuse of . . . discretionary authority" and "being Criminal." Complainant does not elaborate upon or provide support for these allegations, and the record reveals no evidence that misconduct has occurred. Accordingly, to the extent Complainant has raised any allegations that are not merits-related, they are subject to dismissal as frivolous and unsupported by evidence that would raise an inference that misconduct has occurred. See 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: October 22, 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: October 22, 2014