

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. No. 03-14-90073

IN RE: COMPLAINT OF JUDICIAL MISCONDUCT
OR DISABILITY

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

MEMORANDUM OPINION

Filed: November 10, 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 filed a pro se appeal of a social security decision. The matter was assigned to the Subject Judge. The Subject Judge referred the case for the possible appointment of counsel, but no attorney agreed to undertake the representation. The

Subject Judge then ordered Complainant to file his brief. Complainant failed to file the brief and stated in correspondence with the District Court that he did not intend to do so. The defendant then filed a motion to dismiss for failure to prosecute. The Subject Judge granted the motion and dismissed the case with prejudice. Complainant did not appeal.

In this complaint of judicial misconduct, Complainant alleges “malice in law” because he “subscribed to select a jury hearing which did not receive the Court’s consideration.” In addition, Complainant alleges that, when the Subject Judge initially denied a motion to proceed *in forma pauperis* (a decision she later vacated) and also when she denied a motion for appointment of counsel, “[e]ach request is denied gratuitously unjustly and unfairly by Court order. . . .”

Complainant further alleges that the Subject Judge wrongfully denied a motion for recusal and a motion to suppress evidence, and that such decisions constitute “Judicial misconduct and Judicial Disability.” Complainant argues that the Subject Judge’s “denial . . . is formed by insufficient or presumptive evidence or nonformative conditions” and that her failure to recuse ‘is derived from a Defective Title.’” Complainant contends that, in rendering her decisions, the Subject Judge “failed to protect plaintiff’s legal right to impose a challenge in a Judicial Forum pertaining to the conduct of his Judge by Standing. The failure involved neglect and inobservance of Procedural law or the rules that prescribes the steps for having this legal right and duty Judicially enforced.”

While the allegations of the complaint are, at times, rambling and difficult to understand, it is apparent that they largely reflect Complainant’s disagreement with the

Subject Judge's decisions and rulings rendered in the course of his social security proceeding. As such, the 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. 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).

This proceeding is not the appropriate forum for challenging the Subject Judge's decisions and rulings. 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). Complainant's allegations are therefore dismissed.

It is not clear that Complainant has raised any coherent allegations of judicial misconduct apart from his statements challenging the merits of the Subject Judge's decisions and rulings. Accordingly, any remaining allegations of the complaint 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)(ii) and (iii).

s/ Theodore A. McKee
Chief Judge

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ORDER

Filed: November 10, 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: November 10, 2014