

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. No. 03-14-90076

IN RE: COMPLAINT OF JUDICIAL MISCONDUCT
OR DISABILITY

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

MEMORANDUM OPINION

Filed: December 11, 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 Magistrate 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, a prisoner, filed a petition for a writ of habeas corpus. The respondent did not file a timely response to the petition. The Subject Judge issued an order directing a response and, again, no response was filed. The Subject Judge then

ordered respondent to show cause why it should not be held in civil contempt for failing to respond to the petition. The Subject Judge held a hearing on the show cause order, which the respondent attended and which Complainant did not attend. The Subject Judge did not hold respondent in contempt. Shortly after the hearing, respondent filed its response to the petition.

Complainant then filed this complaint of judicial misconduct. Shortly thereafter, the Subject Judge directed that a transcript of the show cause hearing be prepared and sent to Complainant. As of this date, the habeas petition remains pending. The Subject Judge has not yet issued a report and recommendation.

The gravamen of this complaint of judicial misconduct concerns Complainant's view that he should have been permitted to attend the show cause hearing. Complainant expresses his frustration that he "was not present to hear what was said or done," and that he has since been denied a copy of a transcript of the proceeding.¹ He states, "this ex parte communication went on, where [the Subject Judge] refused to grant me access to court transcript for said show cause hearing." In addition, because respondent filed a response to the habeas petition after the show cause hearing, Complainant presumes that the response must reflect "[the Subject Judge's] instructions on how best to proceed to win a favorable ruling, despite defaulting twice, after the secret show cause hearing."

¹ The record reflects that Complainant informally requested a copy of the transcript in a letter. Because he did not file a motion in compliance with the Federal Rules of Civil Procedure, it appears the request was not presented to the Subject Judge for a ruling. In her response to the misconduct complaint, the Subject Judge confirms that correspondence generally is handled by the District Court Clerk's Office and she was unaware of the transcript request prior to the filing of the judicial misconduct complaint.

Complainant states, “I feel prejudiced against because all of my motions on the docket have yet to be ruled on. [The Subject Judge] is bias[ed] and it seems she has disdain for innocent men who are wrongfully convicted.”

Pursuant to Rule 11(b), Rules for Judicial-Conduct and Judicial-Disability Proceedings, I asked the Subject Judge to respond to Complainants’ allegations. The Subject Judge submitted a response and took action in the habeas proceeding to address a number of Complainant’s concerns.

First, to the extent Complainant’s allegations reflect his disagreement with the Subject Judge’s decision to exclude him from the show cause proceeding, they are merits-related.² Similarly, to the extent Complainant contends that the respondent should have been held in contempt or should have been subject to a default judgment, 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.

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

² The transcript reflects that the Subject Judge declined to permit Complainant’s attendance at the show cause hearing because he was housed in a distant location and the hearing did not address the merits of the habeas petition.

judge concludes that the complaint is directly related to the merits of a decision or procedural ruling). Accordingly, these allegations are dismissed.

Moreover, Complainant is reminded that this administrative proceeding is not a proper forum for considering the merits of his legal arguments concerning attendance at the show cause hearing or for entry of a default judgment. 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). Such arguments should be presented in the course of the habeas proceeding itself or in a subsequent merits appeal, not in the context of a complaint under the Judicial Conduct and Disability Act.

In addition, Complainant anticipates that the Subject Judge will rule against him. The Subject Judge has not yet issued a report and recommendation on the pending habeas petition, however, and when she does so, Complainant will have the opportunity to seek review of any adverse determinations by filing objections with the presiding District Judge. This proceeding cannot be used to preemptively decide substantive issues that are yet to be resolved in the habeas matter. Moreover, it is axiomatic that misconduct requires actual conduct. See Rule 3(g), Rules for Judicial-Conduct and Judicial-Disability Proceedings (defining misconduct). Because conjecture about the possibility of future conduct cannot raise an inference that misconduct has occurred, allegations concerning

future events are subject to dismissal. 28 U.S.C. § 352(b)(1)(A)(iii); Rule 11(c)(1)(C), (D), Rules for Judicial-Conduct and Judicial-Disability Proceedings.

Finally, Complainant's remaining contentions, in which he speculates about what may have taken place at the show cause hearing, may now be fully resolved because the Subject Judge ordered the transcript to be prepared, added to the public docket, and provided to Complainant. A review of the transcript confirms that the Subject Judge did not provide "instructions" to the respondent. Rather, the show cause hearing was limited in scope to the procedural issue of respondent's delay in filing a response to the habeas petition and there was no discussion of the merits of any of Complainant's habeas claims. There is simply no support for Complainant's of "egregious and hostile" treatment, "bias," or "disdain" toward Complainant. In short, there is no 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, the complaint is dismissed pursuant to 28 U.S.C. §§ 352(b)(1)(A)(ii) and (iii).

s/ Theodore A. McKee
Chief Judge

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. No. 03-14-90076

IN RE: COMPLAINT OF JUDICIAL MISCONDUCT
OR DISABILITY

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

ORDER

Filed: December 11, 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: December 11, 2014