

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. Nos. 03-14-90087, 03-14-90088

IN RE: COMPLAINT OF JUDICIAL MISCONDUCT
OR DISABILITY

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

MEMORANDUM OPINION

Filed: March 24, 2015

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 (“Subject Judge I”) and a United States District Judge (“Subject Judge II”). 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 civil action against a hospital, alleging statutory violations based on an emergency room visit in December 2011. During the course of a drawn-out discovery period, Complainant moved for sanctions against the defendant hospital a number of times. In one sanctions motion, Complainant alleged that the defendant unduly delayed production of discovery. Subject Judge I granted the motion and awarded Complainant approximately \$400. In a later motion, Complainant alleged spoliation of evidence – specifically, that the hospital had not preserved security camera footage that Complainant alleged would have supported his complaint. Subject Judge I denied the spoliation motion, and Complainant appealed directly to the Court of Appeals. The appeal was dismissed for lack of jurisdiction. Ultimately, in September 2014, Subject Judge II awarded summary judgment to the defendant. Complainant appealed, and the Court of Appeals affirmed the judgment.

In this complaint of judicial misconduct, Complainant recounts the procedural history of his case. He argues that Subject Judge I awarded too small a sanction amount, as Complainant had sought \$50,000 but was awarded about \$400. In addition, Complainant argues that Subject Judge I wrongly denied the spoliation motion, stating that Complainant was “penalized for defendants destruction of evidence.” Complainant further alleges that Subject Judge I delayed ruling on the sanctions motions to “allow[] the defendants to try and clean up their act, by submitting withheld documents well after the ordered date.” According to Complainant, “[t]he court lowered the bar for the wealthy defendant and raised it for the impoverished pro se litigant.”

These 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. This includes the claim of inappropriate delay, which effectively poses a challenge to merits of an official action by the judge – *i.e.*, the decision to assign a lower priority to a particular case.¹ See Rule 3 Commentary, Rules for Judicial-Conduct and Judicial-Disability Proceedings. Such allegations do not constitute 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.

In addition, Complainant alleges that he observed defense counsel “suddenly emerg[ing] from the judge’s chambers.” He states that this caused him to become suspicious that “the judge was maneuvering the case so that the defendants were shielded from any reasonable and adequate sanctions.” Complainant alleges that he therefore conducted research and determined that, before joining the bench in 2006, Subject Judge I

¹ Delay may qualify as cognizable judicial misconduct where “the allegation concerns . . . habitual delay in a significant number of unrelated cases.” Rule 3(h)(3)(B), Rules for Judicial-Conduct and Judicial-Disability Proceedings. Here, however, Complainant’s allegations are limited to a single case.

was employed by a law firm that also employs an individual who sits on the board of the defendant hospital. Complainant alleges that Subject Judge II engaged in misconduct because he “did not intervene after receiving notification of the conflict.”

Arguing that this alleged “nexus” between Subject Judge I and the defendant hospital warranted recusal, Complainant filed a motion raising these allegations. Subject Judge I denied the motion. In his order, Subject Judge I stated that he was last employed by the firm approximately five years before the “genesis” of the case took place, and that he “never represented defendant while in private practice and does not know if defendant was or is a client of the firm.” Complainant moved for reconsideration, which Subject Judge I also denied.

Allegations concerning a decision on a recusal motion are merits-related and therefore do not constitute cognizable misconduct. See Rule 3(h)(3)(A), Rules for Judicial-Conduct and Judicial-Disability Proceedings (“[a]n allegation that calls into question the correctness of a judge’s ruling, including a failure to recuse, without more, is merits-related”); See 28 U.S.C. § 352(b)(1)(A)(ii); Rule 11(c)(1)(B), Rules for Judicial-Conduct and Judicial-Disability Proceedings. Moreover, in light of Subject Judge I’s statements responding to the allegations, there is no basis for questioning Subject Judge I’s impartiality. Thus, any remaining non-merits-related allegations are dismissed 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, 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: March 24, 2015

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: March 24, 2015