

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. Nos. 03-14-90089, 03-14-90090

IN RE: COMPLAINT OF JUDICIAL MISCONDUCT
OR DISABILITY

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

MEMORANDUM OPINION

Filed: January 7, 2015

PRESENT: McKEE, Chief Judge.

This complaint is filed under the Judicial Conduct and Disability Act, 28 U.S.C. §§ 351-64, against two United States District Judges (“Subject Judge I” and “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, a prisoner, is a frequent pro se plaintiff. In late 2012, he filed a civil rights complaint in which he named Subject Judge I as a defendant. Among other things, the civil rights complaint raised allegations that Subject Judge I was biased in favor of

certain state officials because he had personal relationships with them, including that he played baseball with them. Shortly after the case was opened, Subject Judge II issued a *sua sponte* order directing that the case be reassigned from Subject Judge I to a different District Judge. The presiding District Judge ultimately dismissed the complaint with prejudice and Complainant did not appeal.

Since that 2012 proceeding, Complainant has filed more than ten civil rights complaints that were assigned to and decided by Subject Judge I. Subject Judge I dismissed the majority of those complaints for failure to state a claim. In those cases in which Complainant filed an appeal, the Court of Appeals affirmed Subject Judge I's decisions.

This complaint of judicial misconduct appears to be premised exclusively upon the 2012 reassignment order by Subject Judge II.¹ Complainant alleges that “[Subject Judge I] had a recusal order by [Subject Judge II] for the petitioner’s stated facts that [Subject Judge I] was seen playing baseball w/ [state officials]; of which the petitioner has claimed [sic] against. Also, he was a gov’t official out of [the same county as the officials].” Complainant further alleges that “to sit there and allow a recused judge to hear cases that he had been previously recused to, is complete crap.”

Evidently, Complainant is misinterpreting the reassignment order issued by Subject Judge II. That procedural order, which was comprised of a single sentence and was issued

¹ Complainant fails to specify a case in which the alleged “recusal order by [Subject Judge II]” was issued. Based upon a review of the record, the 2012 reassignment order is the only order by Subject Judge II that resembles a “recusal order.” I therefore have assumed that this is the order to which the allegations of the complaint refer.

in the one specific case in which Complainant named Subject Judge I as a defendant, directs reassignment to a new District Judge “in accordance with the court’s procedure for reassignment of cases.” The reassignment order in no way discusses the issue of recusal in that specific case or more generally, and it does not reach the merits of any allegation of the underlying claims raised against Subject Judge I in that action.

Complainant’s reliance on the reassignment order to support allegations that Subject Judge II broadly ordered Subject Judge I’s recusal from all of Complainant’s later-filed cases is both incorrect and inappropriate. These allegations are therefore dismissed as frivolous and unsupported by evidence that would raise an inference that misconduct occurred. 28 U.S.C. § 352(b)(1)(A)(iii); Rule 11(c)(1)(C), (D), Rules for Judicial-Conduct and Judicial-Disability Proceedings.

Moreover, to the extent Complainant is attempting to allege that Subject Judge I inappropriately failed to recuse himself from any or all of Complainant’s numerous civil rights proceedings, a recusal decision is merits-related.² 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”). Merits-related 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

² A motion for recusal must be presented to the Subject Judge in the first instance. It does not appear that Complainant filed a formal recusal motion in the majority, if any, of his proceedings before Subject Judge I.

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, allegations concerning a failure to recuse are subject to dismissal for this reason as well.

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: January 7, 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: January 7, 2015