

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. Nos. 03-14-90095, 03-14-90098

IN RE: COMPLAINT OF JUDICIAL MISCONDUCT
OR DISABILITY

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

MEMORANDUM OPINION

(Filed: February 11, 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 was a pro se plaintiff in a number of related state civil rights actions in which he claimed to be the victim of racial discrimination and retaliation by a municipality, municipal officials, a company, a private family, and others. He removed two of the matters to federal court. In one, Subject Judge I issued an order to show cause why the matter should not be dismissed for lack of jurisdiction. Complainant opposed dismissal, and the complaint currently remains pending. In the other, Subject Judge II ordered a remand to state court. Complainant moved to stay the remand and for sanctions. Subject Judge II denied the motions. Complainant then moved for reconsideration, which Subject Judge II also denied.

In this complaint of judicial misconduct, Complainant alleges that the Subject Judges “are acting not in the interest of justice, but upon the political influences and pursuing their own personal interests aligned with [the municipality defendant] and [the private family defendants].” Specifically, Complainant alleges that Subject Judge I, “in conspiracy with [the private family defendants] and [the municipality defendant],” intentionally caused the order to show cause to be sent to a “false address” that was “known only to the [defendant police department] and their attorneys.” Complainant contends that Subject Judge I “sent the notice of OTSC purposely to above wrong address, so I will miss the deadline . . . and he will be able to remand the case. . . .”

A Magistrate Judge normally does not play any direct role in sending court documents to litigants. Complainant’s allegations notwithstanding, there is no evidence to

indicate that Subject Judge I did so here.¹ In addition, the record reflects that, shortly after Complainant advised the District Court of his correct address, Subject Judge I re-issued the order to show cause and permitted Complainant additional time in which to respond. Thus, to the extent the allegations pertain to Subject Judge I, they 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.

Next, Complainant alleges that Subject Judge II “caused my compulsory counterclaim to disappear from the ECF docket” and, therefore, Subject Judge II’s order remanding the complaint to state court allegedly was entered “secretly . . . based on incomplete record.” Complainant further states, without support or explanation, that Subject Judge II “is politically connected with the [private family defendants], and knows them for decades.”

The allegations primarily reflect Complainant’s disagreement with Subject Judge II’s decision to remand his case. “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

¹ To the extent Complainant’s allegations pertain to individuals who are not covered by the Judicial Conduct and Disability Act (such as District Court Clerk’s office personnel who open cases and mail court documents to litigants), the allegations will not be addressed in this opinion. See 28 U.S.C. §§ 351, 352(b)(1)(A)(i); Rule 4, Rules for Judicial-Conduct and Judicial-Disability Proceedings.

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).

With regard to Complainant's allegation that the Subject Judge caused a counterclaim to "disappear," the record reflects that Subject Judge II considered Complainant's allegations concerning his "compulsory counterclaim." Thus, as a factual matter, the counterclaim did not "disappear" and this allegation therefore is frivolous and unsupported by 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. In addition, to the extent Complainant disagrees with the disposition of the counterclaim, such allegations also are 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.

This administrative proceeding is not an appropriate forum for challenging Subject Judge II's decisions and rulings. Indeed, Complainant already has presented the same allegations in a request for recusal directed to Subject Judge II, which was denied, as well as in a petition for a writ of mandamus to the Court of Appeals, which is pending. 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). Accordingly, Complainant's merits-related allegations are dismissed.

Complainant's remaining allegations consist of nothing more than conjecture and speculation. Complainant offers nothing to lend support to his belief that Subject Judges I and II have ties to the defendants in Complainant's civil rights cases. Indeed, the Subject Judge II responded to Complainant's contentions when he declined to recuse, by stating that "[t]he undersigned has no recollection of any dealings with [the defendant in Complainant's case] – assuming any such dealings ever existed." Accordingly, Complainant's 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)(i), (ii), and (iii).

s/ Theodore A. McKee
Chief Judge

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ORDER

(Filed: February 11, 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)(i), (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: February 11, 2015