

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. No. 03-14-90097

IN RE: COMPLAINT OF JUDICIAL MISCONDUCT
OR DISABILITY

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

MEMORANDUM OPINION

(Filed: February 17, 2015)

PRESENT: RENDELL, Circuit Judge.¹

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).

¹ Acting under Rule 25(f), Rules for Judicial-Conduct and Judicial-Disability Proceedings.

Complainants, a married couple, were pro se plaintiffs in three civil actions before the Subject Judge. In all three, they raised allegations of fraud and other abuse related to their home mortgage. Their daughter attempted to participate in the first two cases as the Complainants' "power of attorney."² In the third and most recent case, which Complainants specify as being the subject of their complaint of misconduct, the Complainants' daughter did not participate as a plaintiff. Shortly after the third case was removed to District Court, the defendants moved to dismiss the complaint. The Subject Judge granted the motion, dismissed the complaint with prejudice, and closed the case. Complainants appealed, and the appeal is pending.

In this complaint of judicial misconduct, Complainants recount the history of their cases before the Subject Judge. They refer to a number of past decisions by the Subject Judge with which they disagree. For instance, they note that, in the second case, the Subject Judge "dismiss[e]d the docket with prejudice accusing the Complainants of abusing the tribunal and admonishe[d] [their daughter] for practicing law who is a pro se party." With regard to their most recent case, they allege that the Subject Judge "recognize[d] and acknowledge[d] [Complainants' daughter] as Power of Attorney and ha[d] legal standing yet she was not on the docket." According to Complainants, this alleged "recognition" of their daughter's role made it "appear[]", this time, the third time,

² Complainants' daughter is not a licensed attorney. The Subject Judge repeatedly cautioned her that a "power of attorney" does not permit its holder to engage in the unauthorized practice of law. Likewise, in the appeal from the dismissal of the second proceeding, the Court of Appeals concluded that, "[w]hatever [their daughter] is authorized to do by the granted power of attorney, she is not authorized to represent them in federal court."

[that] the judge was willing to correct the errors but for fear of being honest and embarrassed (Who or what changed his mind?), he just dismissed the [complaint] . . . , failed to review the facts . . . denied the Complainants due process, etc. violating their constitutional rights, abusing the elderly and the disabled again, denying them an advocate and the right to an court appointed attorney.” Complainants allege that the Subject Judge is incompetent, should have recused himself from their cases, and participated in a conspiracy with the defendants. Complainants further allege that the Subject Judge’s decision to dismiss the third complaint indicates that “[t]he Judge, officer of the Court, has abused his powers, failed to do his paid duties violated oath and ethics, abused the tribunal, as he continued to ignore/willful blindness. . . .” Complainants conclude by demanding that the Subject Judge’s dismissal decision “be reversed and assigned to a new and honest officer of the Court.”

Clearly, Complainants disagree with the decisions and rulings that the Subject Judge rendered in the course of their three cases. 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 disputes do not constitute cognizable judicial misconduct. See 28 U.S.C. § 352(b)(1)(A)(ii); Rules 3(h)(3)(A), 11(c)(1)(B), Rules for Judicial-Conduct and Judicial-Disability Proceedings. Accordingly, Complainants’ these allegations are dismissed. See 28 U.S.C.

§ 352(b)(1)(A)(ii); Rules 3(h)(3)(A), 11(c)(1)(B), Rules for Judicial-Conduct and Judicial-Disability Proceedings.

Moreover, Complainants' arguments about the legal merits of the Subject Judge's decisions are more properly raised in their pending appeal, not in this administrative proceeding.³ 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).

Finally, Complainants present nothing apart from their merits-related allegations to substantiate their vague claims that the Subject Judge is "incompetent," engaged in a conspiracy with the defendants, or "abused his powers, failed to do his paid duties violated oath and ethics, abused the tribunal." A review of the record in the underlying proceeding reveals nothing whatsoever to corroborate such claims. Accordingly, Complainants' remaining accusations are 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.

³ To the extent Complainants seek the Subject Judge's recusal, such a request is inappropriate in the context of a judicial misconduct proceeding. The proper course would have been for Complainants to file a motion for recusal in the District Court. Moreover, a decision on a recusal motion is merits-related and is not cognizable misconduct. See Rule 3(h)(3)(A), 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/ Marjorie O. Rendell
Circuit Judge

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ORDER

(Filed: February 17, 2015)

PRESENT: RENDELL, Circuit Judge.¹

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.

¹ Acting under Rule 25(f), Rules for Judicial-Conduct and Judicial-Disability Proceedings.

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/ Majorie O. Rendell
Circuit Judge

Dated: February 17, 2015