

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. No. 03-15-90005

IN RE: COMPLAINT OF JUDICIAL MISCONDUCT
OR DISABILITY

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

MEMORANDUM OPINION

(Filed: April 2, 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 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).

Complainant is a frequent a pro se plaintiff. Last year, in addition to other proceedings, he filed two pro se civil rights complaints claiming racial discrimination and

retaliation by numerous defendants, and one pro se habeas petition challenging a municipal court arrest warrant, which were assigned to the Subject Judge. The two civil rights proceedings are ongoing. The Subject Judge dismissed the habeas petition without prejudice pending exhaustion of state remedies.

In November 2014, Complainant filed a complaint of judicial misconduct against a District Judge and a Magistrate Judge who presided over several of his other cases. See J.C. Nos. 03-14-90095, 03-14-90098. In February 2015, the complaint was dismissed as merits-related, frivolous, and unsupported by evidence of misconduct. Shortly before the opinion was issued, Complainant filed this related complaint of judicial misconduct against the Subject Judge.

In the current complaint, Complainant alleges that he recently became aware that the Subject Judge “was involved from the very beginning” in the alleged conspiracies described in the earlier misconduct complaint. Complainant claims that the Subject Judge “began to retaliate in further collusion with above defendants.” Complainant contends that the Subject Judge’s “involvement is not accidental, but it is related to her membership in ‘Historical Society,’ where [the Subject Judge] is acting as a ‘consultant.’” Complaint claims that the Subject Judge’s “conduct and delays of administration of justice” are attributable to her alleged “racially biased prejudices, maybe even her own hidden sympathy to Nazi Germany ideals, as they appear to be openly promoted on the floor of ‘Historical Society.’”

It appears Complainant's reference to "delays of administration of justice" is intended to allege undue delay in the three cases presided over by the Subject Judge. A claim of delay generally does not constitute cognizable judicial misconduct, however, as it 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. See Rule 3 Commentary, Rules for Judicial-Conduct and Judicial-Disability Proceedings; see also 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).

Indeed, Complainant already presented these allegations in a petition for a writ of mandamus filed in the Court of Appeals. In the decision denying mandamus relief, the Court of Appeals determined that the claim of delay "finds no support in the record" and that his cases "[were] disposed of or are proceeding in an expeditious manner." Complainant may not challenge the Court of Appeals' conclusions in this judicial misconduct proceeding. 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 allegations are dismissed.

Complainant's remaining allegations far too are vague, improbable, and bizarre to give rise to a reasonable inference that judicial misconduct has occurred. It appears Complainant is attempting to rely on the Subject Judge's membership in a district court's historical society as evidence of both participation in a conspiracy and of racial bias. Accepting as true that the Subject Judge is a member of the historical society, which indeed appears to be the case, Complainant offers nothing to compel a conclusion such a membership is illicit or inappropriate in any respect. A review of the historical society's materials, including its website and newsletters, indicates that its rather innocuous purpose is to "celebrat[e] and preserv[e] the fascinating . . . history of our District Court." There is nothing whatsoever to substantiate Complainant's contentions that the historical society "openly promote[s]" ideals of "Nazi Germany" or establishes the existence of a conspiracy. Accordingly, these allegations are dismissed as 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.

For the foregoing reasons, this complaint is dismissed pursuant to 28 U.S.C. §§ 352(b)(1)(A)(i), (ii), and (iii). Because Complainant recently filed a misconduct complaint that also was dismissed under these provisions, see J.C. Nos. 03-14-90095 and 03-14-90098, Complainant's attention is directed to Rule 10(a), Rules for Judicial-

Conduct and Judicial-Disability Proceedings.¹ Complainant is cautioned that future abuse of the judicial misconduct complaint procedure may result in the imposition of restrictions under that rule.

s/ Theodore A. McKee
Chief Judge

¹ Rule 10(a), Rules for Judicial-Conduct and Judicial-Disability Proceedings, states:

Abusive Complaints. A complainant who has filed repetitive, harassing, or frivolous complaints, or has otherwise abused the complaint procedure, may be restricted from filing further complaints. After giving the complainant an opportunity to show cause in writing why his or her right to file further complaints should not be limited, a judicial council may prohibit, restrict, or impose conditions on the complainant's use of the complaint procedure. Upon written request of the complainant, the judicial council may revise or withdraw any prohibition, restriction, or condition previously imposed.

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ORDER

(Filed: April 2, 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: April 2, 2015