

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. No. 03-15-90018

IN RE: COMPLAINT OF JUDICIAL MISCONDUCT
OR DISABILITY

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

MEMORANDUM OPINION

(Filed: August 24, 2015)

PRESENT: McKEE, Chief Judge.

This is a complaint filed under the Judicial Conduct and Disability Act, 28 U.S.C. §§ 351-64, against a United States District Judge (hereinafter “Subject Judge”). For the reasons discussed below, the complaint will be dismissed.¹

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

¹ Complainant filed two previous complaints of judicial misconduct which were dismissed as frivolous and merits-related. J.C. Nos. 03-13-90085, 03-13-90086. J.C. No. 03-13-90085 also named the Subject Judge.

raise an inference of misconduct. 28 U.S.C. §§ 352(b)(1)(A)(i)-(iii). 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).

As a preliminary matter, Complainant makes allegations concerning individuals who are not subject to the Judicial Conduct and Disability Act; e.g., a Clerk’s Office employee, FBI agents, a state attorney general, a minister, and the police. See 28 U.S.C. §§ 351, 352(b)(1)(A)(i); Rule 4, Rules for Judicial-Conduct and Judicial-Disability Proceedings. Accordingly, these allegations will not be addressed in this opinion.

The instant complaint is lengthy and difficult to understand. In essence, Complainant appears to allege that: (1) the Subject Judge was part of a conspiracy with “racially motivated groups” against him and his daughter; and (2) the Subject Judge was involved with attempts to blackmail, injure, and threaten him. He further alleges that the Subject Judge has “made himself a participant of the concealing and covering [up of] a group of Police Officers that [were] using dogs as [a] weapon, and [were] abusing ... minorit[ies]....” Complainant provides no evidence to support his allegations of judicial misconduct and 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.

Complainant alleges, moreover, that he and a companion went to the District Court to file a motion for a temporary restraining order and “went to address the issue” at the Subject Judge’s Chambers, but were escorted out of the courthouse by a U.S. Marshal. Even assuming arguendo the foregoing is true, these allegations do not support a complaint of judicial misconduct against the Subject Judge. The allegation is dismissed pursuant to Rule 11(c)(1)(A), Rules for Judicial-Conduct and Judicial-Disability Proceedings (complaint will be dismissed to the extent it alleges conduct that, even if true, is not prejudicial to the effective and expeditious administration of the business of the courts).

Complainant also challenges the Subject Judge’s grant of summary judgment “when discovery wasn’t finalized” and complains that one of his cases remains closed. Complainant further alleges that the United States District Court Judges, including the Subject Judge, “must [r]ecuse themselves due to the pattern of misconduct previously and the magnitude of the political influence”² These allegations are plainly merits-related and are not cognizable 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 3(h)(3)(A), Rules for

² In addition to making general allegations of misconduct concerning “other” District Judges, Complainant also makes allegations concerning two other specifically named judges, a Magistrate Judge and a District Judge. I have considered these allegations under Rule 5, Rules for Judicial-Conduct and Judicial-Disability Proceedings. I conclude the allegations do not provide “reasonable grounds for inquiry” into the existence of misconduct or disability and I therefore decline to identify any complaints based upon them. See Rule 5, Rules for Judicial-Conduct and Judicial-Disability Proceedings.

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”); 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).

Finally, Complainant alleges that he has not received an order concerning a motion for a temporary restraining order. Allegations of delay are subject to dismissal as merits-related. 28 U.S.C. § 352(b)(1)(A)(ii). See also Rules 3(h)(3)(A), 3(h)(3)(B) (cognizable misconduct does not include “an allegation about delay in rendering a decision or ruling, unless the allegation concerns an improper motive in delaying a particular decision or habitual delay in a significant number of unrelated cases”), 11(c)(1)(B), Rules for Judicial-Conduct and Judicial-Disability Proceedings. In any event, the allegations are subject to dismissal as frivolous because the Subject Judge does not preside over the case in question. Furthermore, the relevant docket has been reviewed and there is no evidence of any improper delay. Complainant filed the motion in a closed case and subsequently filed a motion to amend the complaint and reopen the case. The motions to amend and reopen were denied.

For the foregoing reasons, the 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: August 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)(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 Circuit Executive of the Court of Appeals within **35 days** of the date on the letter informing the parties of the Chief Judge's order.

18(b) Form. The petition should be in letter form, addressed to the Circuit Executive 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 Office of the Circuit Executive 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: August 24, 2015