

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. No. 03-15-90021

IN RE: COMPLAINT OF JUDICIAL MISCONDUCT
OR DISABILITY

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

MEMORANDUM OPINION

(Filed: May 29, 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, a frequent pro se litigant, filed a civil rights complaint in 2008. In 2009, after a hearing, the Subject Judge dismissed the complaint with prejudice along with

three other pending complaints, denied numerous pending motions, and issued an order enjoining Complainant from filing further civil suits without permission of the Court. Complainant appealed, and the appeal was dismissed for failure to pay the filing fee.

Nearly five years later, Complainant filed a new notice of appeal and a petition for a writ of mandamus. Complainant alleged that he had been attempting to seek permission to file new civil complaints, but his materials were being returned to him without explanation. The Court of Appeals dismissed the appeal for lack of appellate jurisdiction and denied the mandamus petition. In the order denying the mandamus petition, the Court of Appeals suggested that the Subject Judge should explain the reasons for returning submissions to Complainant. Complainant recently filed a second petition for a writ of mandamus raising similar allegations, which remains pending.

In this Complaint of judicial misconduct, Complainant alleges that the Subject Judge should not have permitted Complainant to appear pro se at a hearing because he “did know or should have known” that Complainant “was and has been deemed incompetent to stand or attend (more or less represent himself pro se) at the show cause hearing or any court hearings.” Complainant further alleges that the Subject Judge wrongly dismissed his complaint, allegedly failing to “make all reasonable inferences” in Complainant’s favor.

Complainant contends that he is now being “arbitrarily excluded from adequate access to the courts” due to the Subject Judge’s anti-filing injunction. He states that he has “made since several attempts to meet all requirements to do so in request for

permission to file . . . However, [the Subject Judge] has failed and/or refused to answer or respond to such request . . . keeping me from even appealing.” Complainant also notes that the Subject Judge has failed to follow the Court of Appeals suggestion to explain his reasons for returning Complainant’s submissions to him, and has improperly returned documents that were not intended as civil complaints, including habeas petitions.

Complainant claims that the Subject Judge’s injunction order was “nothing more than a pretext for discrimination.” He alleges that the Subject Judge acted “for personal gain, personal advantage” to “use[] his official position of office to take personal, subjective advantage, control over the petitioner’s matters before him for self serving and opportunist gratifying [*sic*] reason, purposes. . . .” Finally, Complainant claims that the Subject Judge acted with “nefarious intent to cause serious legal injuries to come to plaintiff. . . .”

The allegations of this complaint reflect Complainant’s obvious frustration with the Subject Judge’s decisions and rulings – most particularly, the anti-filing injunction. To the extent Complainant seeks to challenge the merits of the Subject Judge’s order, however, 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. This administrative proceeding not the appropriate forum for raising such allegations, because 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 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 is currently pursuing his challenge to that order in his pending petition for a writ of mandamus before the Court of Appeals. This administrative proceeding does not provide a second and separate opportunity to litigate the same substantive claims. 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). Because merits-related allegations are not cognizable in this matter, they are dismissed.

When considered apart from his merits-related allegations, it is clear that Complainant’s claims of discrimination, abuse of authority, and “nefarious intent” are entirely unsupported. Accordingly, any remaining non-merits-related allegations are subject to dismissal 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, 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: May 29, 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: May 29, 2015