

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. Nos. 03-15-90022, 03-15-90023

IN RE: COMPLAINT OF JUDICIAL MISCONDUCT
OR DISABILITY

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

MEMORANDUM OPINION

Filed: June 1, 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 (“Subject Judge I”) and a United States Magistrate 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, a state prisoner, filed a *pro se* civil rights complaint alleging deliberate indifference to his serious medical and mental health needs in violation of the Eighth Amendment. Shortly after the complaint was filed, the matter was assigned to Subject Judge I, who referred it to Subject Judge II. Complainant moved for the appointment of counsel. Subject Judge II granted the motion; an attorney accepted the representation and filed an amended complaint.

Complainant moved for a preliminary injunction, seeking medical testing and treatment. After a hearing, Subject Judge II recommended denying the motion. Shortly thereafter, at Complainant's request, counsel withdrew from the representation and Complainant again proceeded *pro se*. Subject Judge I then adopted Subject Judge II's recommendation and denied the preliminary injunction.¹ Complainant filed a motion for entry of a default judgment, sought an extension of time to exhaust his administrative remedies, and requested copies of medical records. Subject Judge II denied the motions. The defendants then filed motions to dismiss. Subject Judge II recommended dismissal; Subject Judge I adopted the recommendation and dismissed the complaint. Complainant appealed the judgment. This appeal remains pending.

This complaint of judicial misconduct reflects Complainant's disagreement with Subject Judge II's ruling denying the requests for additional time to exhaust administrative remedies and for copies of medical records (a copy of which he appended to his

¹ Complainant filed two appeals, one after Subject Judge II's recommendation and a second untimely appeal after Subject Judge I's order, but the appeals were dismissed for lack of appellate jurisdiction.

complaint), as well as the decision by Subject Judge I to dismiss the complaint. The misconduct complaint itself consists of a list of case citations, which, Complainant states, reflect “other cases in which the Districts Actions have denied the prose plaintiff a fair opportunity to be heard, [and] appeal court review[ed] the District Court’s decision to admit the evidence i[s] premised on a permissible view of the law for an abuse of discretion.” Complainant also includes a lengthy unattributed quotation from what appears to be a state court rule providing for referral of certain cases to an impartial medical expert, accompanied by a single page from his amended complaint and a copy of a federal civil rights statute.

Because this complaint is based entirely upon Complainant’s disagreement with decisions and rulings by the two Subject Judges, the allegations are all merits-related. Rule 3(h)(3)(A), Rules for Judicial-Conduct and Judicial-Disability Proceedings (“An allegation that calls into question the correctness of a judge’s ruling, including a failure to recuse, without more, is merits-related.”). Merits-related allegations 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, 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.

Complainant’s legal arguments are not appropriate for consideration in this administrative proceeding. Indeed, Complainant soon will have the opportunity to present his merits-related arguments in his pending appeal from the final judgment rendered in his

case. 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).

Apart from the merits-related allegations, Complainant does not specify any wrongdoing on the part of Subject Judge I or Subject Judge II. The record reveals no basis for a complaint of judicial misconduct. Accordingly, this complaint also is dismissed as frivolous and unsupported by evidence sufficient to 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.

For the foregoing reasons, this 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: June 1, 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: June 1, 2015