

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. No. 03-15-90061

IN RE: COMPLAINT OF JUDICIAL MISCONDUCT
OR DISABILITY

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

MEMORANDUM OPINION

(Filed: August 27, 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 filed a pro se civil complaint, which was assigned to the Subject Judge. Complainant moved to compel arbitration and the defendant moved to dismiss the

complaint. The Subject Judge denied the motion to compel arbitration without prejudice, so it court first consider the defendant's motion to dismiss.

Complainant appealed. The Court of Appeals concluded that the Subject Judge should have decided the motion to compel arbitration on its merits before addressing the motion to dismiss. Accordingly, the Court vacated the Subject Judge's order and remanded the matter for further proceedings, directing the Subject Judge to first consider whether the district court had subject matter jurisdiction before addressing the motion to compel arbitration.

While the appeal was pending, Complainant moved to recuse the Subject Judge. The Subject Judge declined to recuse. After the Court of Appeals remanded the matter, the Subject Judge ordered further briefing on the issue of subject matter jurisdiction. The parties responded to that issue, and Complainant filed two more motions for recusal. After a hearing, the Subject Judge issued an order again denying recusal, compelling arbitration, and staying the case pending the arbitration.¹

In this complaint of judicial misconduct, Complainant alleges the Subject Judge has "use[d] the courtroom as her playground to be partial bully and harasser." Among other things, Complainant takes issue with the Subject Judge's stated concern that Complainant's documents were being ghostwritten by an attorney, alleging that the Subject Judge inappropriately "questioned my pro se status" and "began harassing my former attorney" by "directing me to serve him with her orders." In addition,

¹ The written order does not address the issue of subject matter jurisdiction.

Complainant alleges that the Subject Judge “continued demonstrating her bias and partiality” by accepting the defendant’s position that an underlying state court matter had been settled, rather than Complainant’s position that it had been dismissed without prejudice.

Complainant theorizes that the alleged “anger, bias and misconduct” may be directed at her because she is “a senior citizen, a woman, African American, Pro Se – or all of the above.” She cites the decision by the Court of Appeals to vacate the Subject Judge’s decision on the motion to compel arbitration as evidence of “the partiality of this judge.” She states, “[t]he ruling, which was not precedential, either indicates this judge’s incompetence or willful misconduct.” Finally, Complainant alleges that, since the matter was remanded by the Court of Appeals, the Subject Judge has retaliated against her by allegedly delaying the progress of the case: “SIXTEEN MONTHS AND COUNTING ... just to enforce arbitration. (Calculate the time and money spent.) Forced arbitration – and I am still forcing.”

It is clear that Complainant’s allegations are almost entirely 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 . . . is merits-related.”). They reflect her disagreement with procedural rulings and substantive decisions rendered in the course of her case, including the Subject Judge’s directives concerning the possible participation of Complainant’s former attorney and her factual

determinations concerning the outcome of the related state court case. This proceeding is not an appropriate forum for raising such allegations.

Complainant raised these allegations in her motions to recuse the Subject Judge, which were denied. Indeed, in the order denying the first recusal motion, the Subject Judge specifically noted that the basis for the motion was Complainant's disagreement with the Subject Judge's decisions and rulings. The decision not to recuse is merits-related and not subject to review in this administrative proceeding. See 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." (emphasis added)).

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). 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). Accordingly, these allegations are dismissed.

Complainant alleges that the Subject Judge intentionally delayed the progress of her case. Generally, delay is not cognizable as judicial misconduct because it effectively poses a challenge to merits of official actions 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. As previously observed, merits-related claims are not cognizable under the Judicial Conduct and Disability Act. 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. A claim of delay in a single case may qualify as cognizable judicial misconduct only if “the allegation concerns an improper motive in delaying a particular decision” Rule 3(h)(3)(B), Rules for Judicial-Conduct and Judicial-Disability Proceedings.

Contrary to Complainant’s allegations, the record does not reflect a period of substantial or objectively unreasonable delay. After the Court of Appeals remanded the case, the matter was pending for a period of approximately six months before the Subject Judge ordered the parties to arbitration, and during that period, the Subject Judge held a hearing and considered several of Complainant’s motions. Indeed, the hearing would have been conducted sooner, but was delayed several weeks to accommodate Complainant’s inability to appear due to illness.

Moreover, even if Complainant could establish undue delay, there is no evidence of improper motive on the part of the Subject Judge. Complainant contends that the Subject Judge is biased and retaliated against her. When these claims are considered apart from the merits-related allegations, however, it is apparent that the claims are based upon speculation and subjective belief. Complainant's contention that a favorable decision by the Court of Appeals supports her allegations is incorrect. That decision speaks only to the legal merit of a judicial decision. It provides no evidence to substantiate a claim of judicial misconduct.

Complainant's unsupported allegations of bias and delay do not give rise to an inference that misconduct has occurred. Thus, to the extent they are not merits-related, they are subject to dismissal as frivolous and unsupported by evidence that would raise an inference that misconduct has occurred. See 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: August 27, 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: August 27, 2015