

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. No. 03-15-90062

IN RE: COMPLAINT OF JUDICIAL MISCONDUCT
OR DISABILITY

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

MEMORANDUM OPINION

(Filed: November 13, 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 Magistrate Judge (hereinafter “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).

As a preliminary matter, Complainant makes allegations concerning individuals who are not subject to the Judicial Conduct and Disability Act; e.g., attorneys and defendants. 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 allegations in this complaint concern a civil suit filed against county employees and county entities regarding the defendants' treatment of Complainants' son while he was incarcerated. Complainants allege that the Subject Judge has engaged in bias and favoritism and has "unfairly" impeded due process. Complainants also imply that the Subject Judge's biased behavior may be due to personal ties to a county "and/or the influence of having a high profile . . . politician as a Defendant. . . ." In support of these allegations, Complainants complain about a "pattern" of rulings, including decisions concerning a motion to dismiss, discovery disputes, and a motion for sanctions, among other rulings. Complainants further contend that the Subject Judge exposed them to undue financial burdens with an "improper motive" when she allowed defendants to continue a deposition with no time limit and Complainants had to pay for a transcript of a hearing in which the Subject Judge made oral rulings.

These allegations are plainly merits-related because they relate to the merits of decisions and procedural rulings. These types of allegations 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 Judicial-Conduct and Judicial-Disability Proceedings (“[a]n allegation that calls into question the correctness of a judge’s ruling ... 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). It is well established that 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). In any event, there is no evidence to support Complainants’ allegations of 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.¹

In addition, Complainants allege that the Subject Judge made a comment indicative of bias when she said that a defendant county does not have money and has financial

¹ Although he is not named as a Subject Judge, Complainant also contends that a District Judge has exhibited “great indifference” to the Subject Judge’s “biased conduct.” I have considered this allegation under Rule 5 of the Rules for Judicial-Conduct and Judicial-Disability Proceedings and conclude that this allegation does not provide “reasonable grounds for inquiry” into the existence of misconduct or disability and decline to identify any complaints based on these allegations. Id.

problems. This comment, even if true, is not evidence of bias or judicial misconduct.

This allegation is dismissed as frivolous. Id.

Furthermore, Complainants allege the Subject Judge ignored and failed to confront the alleged emergence of anti-Semitism in the case. The allegation of anti-Semitism is not based on any of the Subject Judge's own actions, but rather is based on opposing counsel's questioning about Complainants' religious background during a deposition. Complainants further contend that defendants intentionally retained an anti-Semitic expert. To the extent Complainants allege the Subject Judge should have awarded sanctions or taken some other official action concerning Complainants' allegations of anti-Semitism, Complainants' allegations are again subject to dismissal as merits-related. See 28 U.S.C. § 352(b)(1)(A)(ii); Rule 3(h)(3)(A), Rules for Judicial-Conduct and Judicial-Disability Proceedings. Moreover, the record does not reflect that Complainants filed a formal motion for sanctions on this ground. In any event, Complainants' exhibits have been reviewed and they provide no evidence to support allegations of judicial misconduct of any kind. Complainants' allegations are, therefore, subject to dismissal as frivolous and unsupported by any evidence that would raise an inference that misconduct has occurred. Id.

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: November 13, 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 within **42 days** after the date of the chief judge's order.

18(b) Form. The petition should be in letter form, addressed to the Circuit Executive, 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 and on the Court of Appeals’ internet site, www.ca3.uscourts.gov.

s/ Theodore A. McKee
Chief Judge

Dated: November 13, 2015