

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. No. 03-15-90070

IN RE: COMPLAINT OF JUDICIAL MISCONDUCT
OR DISABILITY

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

MEMORANDUM OPINION

(Filed: August 25, 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 Bankruptcy 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 long-ago employee of a bankrupt company, raised claims in the bankruptcy proceeding that the company wrongfully terminated him and denied him employment benefits. The bankruptcy court disallowed the claims more than ten years

ago. Complainant repeatedly has attempted to bring the same claims in various courts and has filed numerous appeals in District Court and in the Court of Appeals. At least one court has limited his ability to file new cases concerning those claims.

In this short, vague, and difficult to interpret complaint of judicial misconduct, Complainant alleges “adverse inference . . . involving this judicial inquiry, misconduct, in the above subject judge(s) . . . response-continuing objection the right to duplicitous appeal. . . . related to fraudulent concealment.” Complainant cites “violations under 18 USC-152 through 158(a) to (d) . . .” and alleges the violations “involve obstruction of justice, falsification of records in Federal investigation and bankruptcy.” Complainant states that he wishes to initiate proceedings to remove the Subject Judge from office.

Although Complainant’s terminology is not clear, it is apparent that at least some of his allegations reflect his disagreement with decisions and rulings in the bankruptcy proceeding. For instance, he alleges that his “action in nature and in which plaintiffs, all disability claims – benefit suit, has clear and indisputable right to relief.” This appears to indicate that Complainant believes the Subject Judge wrongfully declined to grant his disability claims. Such 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 proceeding is not an appropriate forum for raising merits-related allegations. 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 are not 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, Complainant's merits-related allegations are dismissed.

Complainant's remaining allegations are unintelligible. The record in the bankruptcy proceeding reveals nothing to substantiate any claims of misconduct or impropriety. 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: August 25, 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 25, 2015