

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. No. 03-15-90082

IN RE: COMPLAINT OF JUDICIAL MISCONDUCT
OR DISABILITY

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

MEMORANDUM OPINION

(Filed: November 5, 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).

Several years ago, Complainant filed a pro se civil complaint alleging discrimination by her former employer. The matter eventually was assigned to the Subject

Judge. After Complainant filed several motions for summary judgment and the parties conducted a period of discovery, the Subject Judge held a pretrial conference.

After the pretrial conference, the Subject Judge directed Complainant to appear for a deposition. She did not cooperate with the deposition. She also failed to comply with subsequent orders, including an order directing her to show cause why her case should not be dismissed for failure to comply with court orders. The defendant bank then moved for involuntary dismissal of the complaint. The Subject Judge granted the motion, denied Complainant's motions for summary judgment and other motions as moot, and closed the case.

A panel of the Court of Appeals affirmed the dismissal, concluding that Complainant's "dilatory behavior and refusal to comply with court orders over the course of years of litigation left the District Court with little choice." Complainant petitioned for rehearing, which the Court of Appeals denied. Complainant petitioned the United States Supreme Court for a writ of certiorari, which also was denied.

This complaint of judicial misconduct focuses primarily on the pretrial conference that the Subject Judge conducted in her case. Complainant contends that the transcript of that conference provides "direct evidence" of intentional misconduct, physical disabilities, and mental incapacity on the part of the Subject Judge. Indeed, Complainant argues that

the hearing “is so damaging that . . . [a District Court employee] criminally withheld the ‘minute entry of the proceedings’ from the . . . Docket while the case was open.”¹

Specifically, Complainant alleges that, at the pretrial conference, the Subject Judge’s “dastardly purpose” was to “force an illegal deposition down Plaintiff’s throat” without (according to Complainant) properly complying with the Federal Rules of Civil Procedure. Complainant further alleges that the Subject Judge “ignored” a pending motion and “threatened Plaintiff with dismissal.” Complainant argues that the Subject Judge wrongfully dismissed her allegedly “meritorious claim,” “refused to comply with pretrial rules of civil procedure,” and “denied [her] procedural due process of law making all orders void.”

With regard to the Subject Judge’s physical and mental capacity, Complainant alleges that the Subject Judge “had extreme difficulty hearing even with his hearing aid turned up.” In addition, she argues that his “physical and cognitive conditions have

¹ Complainant alleges that the District Court employee engaged in misconduct by failing to include a “minute entry” on the docket to reflect that the pretrial conference occurred. The employee in question is not a judge, and is therefore not covered by the not covered by the provisions of the Judicial Conduct and Disability Act or by the Rules for Judicial-Conduct and Judicial-Disability Proceedings. See Rule 4, Rules for Judicial-Conduct and Judicial-Disability Proceedings (A complaint filed under the Rules “may concern the actions or capacity **only of judges**” (emphasis added)). Such allegations are outside the purview of this proceeding and will not be addressed in this opinion. See 28 U.S.C. §§ 351, 352(b)(1)(A)(i); Rule 4, Rules for Judicial-Conduct and Judicial-Disability Proceedings. Moreover, the Subject Judge entered a written order on the date of the pretrial conference, which discusses the fact that the pretrial conference took place. Thus, any implication that the Subject Judge attempted to conceal the pretrial conference is 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.

degenerated to the point where an unidentified caregiver became concerned with his welfare after a few minutes into the conference.” Finally, Complainant argues that the Subject Judge’s clerks and chambers staff “needed . . . to tell him what to do next” because he “knows nothing about the case and is 20 years behind. . . .” Finally, Complainant surmises that, because the Subject Judge stated at the pretrial conference that he did not want any motions, he must have been “unable to rule on motions” due to an alleged “cognitive impairment.”

First, several of Complainant’s allegations are intended to challenge decisions rendered by the Subject Judge in the course of the case, including the order directing her to appear for a deposition and, ultimately, the order dismissing her complaint. Clearly, such allegations are 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.

In the course of her appeal, Complainant already has had an opportunity to present her legal and factual challenges to the merits of the Subject Judge’s decisions. This administrative proceeding does not provide a second bite at that apple. 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). Accordingly, all merits-related 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.

Next, a review of the transcript of the pretrial conference undermines Complainant's remaining claims of misconduct. The Subject Judge did not "force an illegal deposition down Plaintiff's throat," "ignore[]" a pending motion, or "threaten[] Plaintiff with dismissal." Rather, the Subject Judge carefully and respectfully explained why Complainant's deposition was required before he could rule on her pending motion for summary judgment, as well as the potential consequences if Complainant chose not to cooperate with that deposition: "[Y]ou're going to have to give your deposition in order for me to consider your motion for summary judgment. Now, if you don't give your deposition, what you expose yourself to is a motion to dismiss your case with prejudice without consideration of its merits for failure to prosecute the case." Complainant responded, "Yes, sir. I understand."²

² The Subject Judge also explained that he would not consider Complainant's other motions, including a motion to vacate, until after the parties conducted discovery sufficient to permit the motion for summary judgment to be decided. The Subject Judge's explanation for declining to decide the other motions undermines Complainant's allegation that the Subject Judge was "unable to rule on [those] motions" due to an alleged "cognitive impairment." Because that allegation is baseless, it is dismissed as frivolous

There is nothing threatening or inappropriate about this exchange. Apart from Complainant's disagreement with the Subject Judge's decision to order her deposition, it is apparent that the allegations of misconduct are wholly baseless. They are therefore 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.

With regard to mental capacity, the transcript of the pretrial conference fails to support Complainant's claim that the Subject Judge suffers from "a temporary or permanent condition rendering a judge unable to discharge the duties of the particular judicial office." Rule 3(e), Rules for Judicial-Conduct and Judicial-Disability Proceedings. Indeed, contrary to Complainant's allegations, the transcript demonstrates the Subject Judge's competence, including his knowledge of Complainant's case, his command of the courtroom, and his understanding of the rules of civil procedure.

While there was one instance in which a clerk directed the Subject Judge's attention to a relevant rule, this was appropriate within the context of the discussion, which centered around the propriety of a rather unusual request to have a family member record a deposition. Moreover, because it is a clerk's duty to assist a judge with legal research, such assistance simply is not indicative of a "cognitive impairment."

Accordingly, the allegation of mental incapacity is insufficient to raise an inference that a

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.

disability exists. See Rule 11(c)(1)(D), Rules for Judicial-Conduct and Judicial-Disability Proceedings.

Finally, with regard to physical capacity, Complainant's sole allegation concerns the Subject Judge's difficulty hearing. The record does reflect that, during the pretrial conference, the Subject Judge asked counsel to step closer to the microphone and to speak up. The Subject Judge then commented, "These hearing aids don't do a very good job. So don't be afraid to yell." The record further reflects that, when counsel adjusted her volume, the Subject Judge had no further difficulties.

Again, this is far from sufficient to demonstrate that the Subject Judge suffers from a physical condition rendering him unable to discharge the duties of office. See Rule 3(e), Rules for Judicial-Conduct and Judicial-Disability Proceedings. Indeed, a simple accommodation by counsel was adequate to compensate for any hearing difficulties the Subject Judge was experiencing. This allegation is therefore insufficient to raise an inference that a physical disability exists. See Rule 11(c)(1)(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)(i), (ii), and (iii).

s/ Theodore A. McKee

Chief Judge

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. No. 03-15-90082

IN RE: COMPLAINT OF JUDICIAL MISCONDUCT
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ORDER

(Filed: November 5, 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 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: November 5, 2015