

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. No. 03-16-90017

IN RE: COMPLAINT OF JUDICIAL MISCONDUCT
OR DISABILITY

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

MEMORANDUM OPINION

(Filed: April 20, 2016)

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 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, a pro se plaintiff in a state court proceeding, filed a notice of removal to District Court along with a motion to proceed in forma pauperis. The matter was assigned to the Subject Judge. The Subject Judge issued a sua sponte order concluding that, because Complainant was the plaintiff in the state court matter, Complainant was not authorized to remove the case to federal court. The Subject Judge therefore dismissed the case. Complainant filed a motion for reconsideration, which the Subject Judge denied. Complainant did not file a notice of appeal from the dismissal order or from the order denying reconsideration. The time for filing a notice of appeal has expired. Complainant filed a second motion for reconsideration, which remains pending.

In this complaint of judicial misconduct, Complainant sets forth his disagreement with the Subject Judge's decision to dismiss his case. He alleges, "I sought transfer of case before an appropriate jurisdiction. This 'judge' provided incompetent reasons to enter judgment. . . . From his ruling . . . it appears that misconduct is being used to undermine the judicial process and deny my access to court."

Clearly, 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. Merits-related allegations are beyond the scope of a judicial misconduct proceeding. 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). Because the allegations do not constitute cognizable misconduct, they 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.

In addition, Complainant vaguely theorizes that the Subject Judge must have dismissed his case as a result of improper collusion with the now-retired state court judge who presided over Complainant's state court proceeding. Complainant alleges, "[i]t appears that [the state court judge] implemented coercion or bribed [the Subject Judge] for a specific outcome. Or [the Subject Judge] did a personal favor for [the state court judge]." ¹

Complainant's claims of collusion, coercion, and bribery are entirely unsubstantiated and so lacking in indicia of reliability that no further inquiry is warranted. Accordingly, the allegations are subject to dismissal as frivolous and unsupported by 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 A retired state court judge is not covered by the Judicial Conduct and Disability Act. Accordingly, any alleged conduct by the retired state court judge 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.

Based on the foregoing, 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: April 20, 2016)

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: April 20, 2016