

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. No. 03-16-90018

IN RE: COMPLAINT OF JUDICIAL MISCONDUCT
OR DISABILITY

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

MEMORANDUM OPINION

(Filed: April 14, 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 Circuit 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).

In this very brief complaint of misconduct, Complainant alleges that “[the Subject Judge] and the Judicial Conference Committee have violated my statutory, civil, constitutional, and human rights by allowing Federal Judges to commit crimes and by refusing to address my Petitions for Review in violation of 28 U.S.C. § 331.” Complainant does not provide further elaboration upon this single statement.

Complainant has not previously filed a complaint of judicial misconduct in this jurisdiction. If Complainant has participated in matters before the Judicial Conference Committee on Judicial Conduct and Disability, those proceedings are confidential and not available for consideration here. See Rule 23(a), Rules for Judicial-Conduct and Judicial-Disability Proceedings (“The consideration of a complaint by a chief judge, a special committee, a judicial council, or the Committee on Judicial Conduct and Disability is confidential. Information about this consideration must not be disclosed by any judge or employee of the Judiciary. . . .”).

Even if Complainant is attempting to challenge the merits of determinations reached by the Judicial Conference Committee, 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 includes determinations reached in judicial misconduct proceedings. See Commentary to Rule 3, Rules for Judicial-Conduct and Judicial-Disability Proceedings.

Decisions by the Judicial Conference Committee on Judicial Conduct and Disability are final. Rule 21(g), Rules for Judicial-Conduct and Judicial-Disability Proceedings. The merits of those determinations cannot be challenged by filing a complaint of judicial misconduct against an individual committee member. 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. Accordingly, the 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.

In addition, Complainant has provided nothing to support his exceedingly vague contention that the Subject Judge “allow[ed] federal judges to commit crimes.” Because it is unsubstantiated, this allegation also is 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.

Based on the foregoing, 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: April 14, 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)(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 14, 2016