

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. Nos. 03-16-90029, 03-16-90030

IN RE: COMPLAINT OF JUDICIAL MISCONDUCT
OR DISABILITY

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

MEMORANDUM OPINION

(Filed: September 21, 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 (“Subject Judge I”) and a United States Magistrate Judge (“Subject Judge II”). For the reasons 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 prisoner who describes himself as suffering from schizophrenia, depression, and post-traumatic stress syndrome, filed two pro se civil rights complaints that were assigned to Subject Judges I and II. Complainant filed the first complaint in 2013 and Subject Judge II granted a request for counsel in late 2014. While the District Court attempted to locate pro bono counsel, Complainant continued to file numerous pro se motions, pleadings, and other documents, including several amended complaints, requests for preliminary injunctions, and at least two motions for recusal. Subject Judge I issued an order declining to recuse. Counsel entered an appearance on behalf of Complainant in late 2015 and counsel then filed an amended complaint. The matter remains pending.

Complainant filed the second civil rights complaint in 2015. He filed numerous pro se submissions in that matter as well, including motions for the appointment of counsel, motions for preliminary injunctions, and a motion for recusal. Subject Judge I issued an order denying the recusal motion. Most recently, Complainant filed a motion for leave to amend the complaint, which remains pending.

In this complaint of judicial misconduct, Complainant alleges that the Subject Judges “placed or allowed documents to be placed on the docket in confusing ways,” for instance, in the “wrong order,” “separated from their exhibits,” or “under names intended to hide the documents or with pages missing.” In addition, Complainant alleges that the Subject Judges unfairly “have claimed plaintiff is ‘inundating’ the court with motions and

is requiring him to write a letter asking for permission to file motions.” Finally, Complainant contends that Subject Judges I and II are biased against him and should have granted his motions to recuse from his proceedings.¹

To the extent Complainant’s allegations concern the manner in which documents are entered on the dockets in his two proceedings, the allegations do not implicate the Subject Judges. Docket entries are created by clerk’s office staff members, who are not covered by the Judicial Conduct and Disability Act. See 28 U.S.C. §§ 351, 352(b)(1)(A)(i); Rule 4, Rules for Judicial-Conduct and Judicial-Disability Proceedings. Although Complainant contends that Subject Judges I and II “allowed” Complainant’s documents to be docketed in a manner he finds confusing, judges ordinarily play no direct role in the docketing process and there is no indication that the Subject Judges did so here. Moreover, as an objective matter, the docket entries in Complainant’s cases do not appear to be unusually confusing, particularly in light of the volume and frequency of Complainant’s pro se submissions. Accordingly, to the extent they apply to the Subject Judges at all, these allegations are dismissed 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 Complainant also presents allegations concerning the conditions of his confinement in prison, including claims that prison officials have denied him access to the prison law library. Claims concerning actions by prison officials will not be addressed in this opinion. Such individuals are not judges and therefore are not covered by the Judicial Conduct and Disability Act. Any alleged misconduct by prison officials is therefore beyond the scope of this proceeding. See 28 U.S.C. §§ 351, 352(b)(1)(A)(i); Rule 4, Rules for Judicial-Conduct and Judicial-Disability Proceedings.

Several of Complainant's allegations reflect his disagreement with the merits of decisions and rulings by the Subject Judges, including decisions to limit the filing of motions and not to recuse from Complainant's cases. Such allegations clearly 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 do not constitute cognizable misconduct. See Rule 3(h)(3)(A), Rules for Judicial-Conduct and Judicial-Disability Proceedings. Accordingly, Complainant's merits-related allegations are subject to dismissal. 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.

Finally, Complainant alleges that the Subject Judges are biased against him. He does not, however, provide anything to substantiate a claim of bias. In the orders denying Complainant's recusal motions, Subject Judge I confirmed that he harbors no bias against Complainant, and a review of the record provides no support for any claim of judicial misconduct on the part of either of the Subject Judges. Accordingly, Complainant's remaining 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.

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: September 21, 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: September 21, 2016