

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. No. 03-15-90004

IN RE: COMPLAINT OF JUDICIAL MISCONDUCT
OR DISABILITY

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

MEMORANDUM OPINION

Filed: April 15, 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).

Complainant, a state prisoner, is a plaintiff (along with numerous co-plaintiffs) in a civil rights action against prison officials, claiming violation of the right to the free

exercise of religion. The matter has been pending before the Subject Judge since 2012 and is ongoing.

In this complaint of judicial misconduct, Complainant alleges that the defendants in the civil proceeding “made false statements” and the Subject Judge “failed to compel the defendants . . . to correct their errors” and “failed to even acknowledge the defendants[’] . . . false statements.” Complainant further alleges that the defendants failed to obey a court order directing them to provide Complainant with legal materials; he contends that they are doing so “because they [know] beforehand [that the Subject Judge] is not going to force them to comply with any court orders, denying plaintiffs access to relevant materials to their care.” Finally, Complainant surmises that the Subject Judge “will dismiss plaintiffs[’] RLUIPA claims forcing them to appeal rather than applying the [correct] standard of review. . . .”

These allegations are plainly intended to challenge the Subject Judge’s decisions and rulings in the course of the pending civil rights proceeding. They are therefore 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 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).

Indeed, Complainant raised many of the same allegations in a motion for the Subject Judge's recusal, which was denied. 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, Complainant's merits-related allegations are dismissed.

In addition, to the extent Complainant anticipates that the Subject Judge ultimately will enter judgment against the plaintiffs in the civil rights proceeding, she has not done so. When the Subject Judge does enter a final and appealable judgment in the case, Complainant and his co-plaintiffs will have the opportunity to seek review of any adverse determinations in the Court of Appeals. This administrative proceeding cannot be used to preemptively decide substantive issues that are yet to be resolved in the pending civil rights matter. Moreover, it is axiomatic that misconduct requires actual conduct. See Rule 3(g), Rules for Judicial-Conduct and Judicial-Disability Proceedings (defining misconduct). Because conjecture about the possibility of future conduct cannot raise an inference that misconduct has occurred, Complainant's allegations are subject to dismissal. 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: April 15, 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: April 15, 2015