JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. No. 03-08-90079

IN RE: COMPLAINT OF JUDICIAL MISCONDUCT
OR DISABILITY

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

MEMORANDUM OPINION

(Filed: July 15, 2009)

PRESENT: McKee, Circuit Judge.[1]

This is a complaint filed under the Judicial Conduct and Disability Act, 28 U.S.C. § 351, *et seq.*, against a United States Circuit Judge (hereinafter "Subject Judge"). For the reasons discussed below, the above-captioned complaint will be dismissed.[2]

---

[1] Acting under Rule 25(f), Rules for Judicial-Conduct and Judicial-Disability Proceedings.

[2] Complainant is the subject of an order issued by United States Court of Appeals for the Third Circuit enjoining him from filing any appeal or petition for writ of mandamus/prohibition related to certain prior district court civil actions. Complainant has previously filed multiple complaints under the Judicial Conduct and Disability Act (J.C. Nos. 91-06, 91-07, 91-08, 91-09, 91-15, 91-16, 91-17, and 91-18). Each of these complaints was dismissed as frivolous and/or merits-related. In addition to the instant complaint, Complainant has filed another complaint (J.C. No. 03-08-90077).

The Judicial Conduct and Disability Act provides a remedy if a federal judicial officer "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 that it is not cognizable under the statute, is directly related to the merits of a decision or procedural ruling, or is legally frivolous or lacks sufficient evidence to raise an inference of misconduct. 28 U.S.C. § 352(b)(1)(A)(i-iii). 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).

As a preliminary matter, the complaint at issue here contains allegations directed at a Supreme Court Justice and other individuals who are not covered by the Judicial Conduct and Disability Act. Accordingly, the alleged actions of these individuals 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.[3] Complainant also references a district court judge who does not sit in this Circuit. Complainant's allegations concerning this judge are dismissed under Rule 11(c)(1)(F), Rules for Judicial-Conduct and Judicial-

---

[3] Complainant references another United States Circuit Judge in his complaint who is named as the Subject Judge in J.C. No. 03-08-90077. Complainant's allegations regarding this Circuit Judge will be addressed in the opinion dismissing J.C. No. 03-08-90077.

Disability Proceedings. See also Rule 7, Rules for Judicial-Conduct and Judicial-Disability Proceedings.

Complainant alleges that the Subject Judge acted without jurisdiction and improperly provided immunity to various individuals and entities. Complainant also discusses, at length, the merits of his claims in various civil and criminal matters. These allegations are merits-related and are therefore dismissed under 28 U.S.C. § 352(b)(1)(A)(ii). See also Rule 3(h)(3)(A), Rules for Judicial-Conduct and Judicial-Disability Proceedings (cognizable misconduct does not include "an allegation that 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.

Although his allegations are far from a model of clarity, Complainant also appears to allege that the Subject Judge received bribes, facilitated the laundering of bribes, and participated in a "criminal-racketeering adventure." Complainant further alleges that the Subject Judge failed to disclose certain information from Complainant about a Supreme Court Justice during his confirmation hearings and therefore committed fraud and deceit. In addition, Complainant states that the Subject Judge knew that answers given by the Justice were replete with perjury and fraud, knew that reports of the Standing Committee of the American Bar Association and Federal Bureau of Investigation were false, and concealed information from the Federal Bureau of Investigation. These allegations are frivolous and are dismissed under 28 U.S.C. § 352(b)(1)(A)(iii). See also Rule 11(c)(1)(C), Rules for Judicial-Conduct and Judicial-Disability Proceedings.

Given the frivolous nature of Complainant's current and prior allegations, his attention is again directed to Rule 10(a), Rules for Judicial-Conduct and Judicial-Disability Proceedings.[4] Future abuse of the complaint procedure could result in the imposition of sanctions under that rule.

For the foregoing reasons, the complaint is dismissed under 28 U.S.C. § 352(b)(1)(A)(i), (ii), and (iii).

/s/ Theodore A. McKee
Circuit Judge

---

[4] Rule 10(a), Rules for Judicial-Conduct and Judicial-Disability Proceedings, states:

> (a) Abusive Complaints. A complainant who has filed repetitive, harassing, or frivolous complaints, or has otherwise abused the complaint procedure, may be restricted from filing further complaints. After giving the complainant an opportunity to show cause in writing why his or her right to file further complaints should not be limited, a judicial council may prohibit, restrict, or impose conditions on the complainant's use of the complaint procedure. Upon written request of the complainant, the judicial council may revise or withdraw any prohibition, restriction, or condition previously imposed.

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. No. 03-08-90079

IN RE: COMPLAINT OF JUDICIAL MISCONDUCT
OR DISABILITY

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

ORDER

(Filed: July 15, 2009)

PRESENT: McKee, Circuit Judge.[1]

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 pursuant to 28 U.S.C. § 352(b)(1)(A)(i), (ii), and (iii).

Complainant is notified in accordance with Rules 11(g)(3) and 18, Rules for Judicial-Conduct and Judicial-Disability Proceedings, of his right to appeal the dismissal of his complaints 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

---

[1] Acting under Rule 25(f), Rules for Judicial-Conduct and Judicial-Disability Proceedings.

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
Circuit Judge