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June 2, 2011

CONFIDENTIAL

Honorable Theodore A. McKee
Chief Judge
United States Court of Appeals
James A. Byrne United States Courthouse
601 Market Street, Room 20614
Philadelphia, PA 19106-1729

George Sassower
10 Stewart Place
White Plains, NY 10603

Re: In the Matter of a Complaint Filed Under
28 U.S.C. §351, *et seq.*
J. C. No. 03-10-90099

Dear Chief Judge McKee and Mr. Sassower:

Enclosed please find a copy of a Memorandum Opinion and Order filed in the above-captioned case. Any petition for review of this decision must be filed in this office by July 7, 2011 (within 35 days of the date on this letter). Rules 11(g)(3) and 18, Rules of the Judicial-Conduct and Judicial-Disability Proceedings.

Very truly yours,
MARCIA M. WALDRON, Clerk

By: /s/ Jeanne T. Donnelly
Jeanne T. Donnelly
Staff Attorney

Enclosures

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. No. 03-10-90099

IN RE: COMPLAINT OF JUDICIAL MISCONDUCT
OR DISABILITY

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

MEMORANDUM OPINION

(Filed: June 2, 2011)

PRESENT: RENDELL, Circuit Judge.[1]

This is a complaint filed under the Judicial Conduct and Disability Act, 28 U.S.C. §§ 351-64, against a United States Circuit Judge (hereinafter "Subject Judge"). Complainant seeks to attack the dismissal of two prior complaints of judicial misconduct. For the reasons discussed below, the complaint will be dismissed.[2]

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,

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[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, 91-18, 03-08-90077, 03-08-90079, 03-09-90074, 03-09-90075). These complaints were all dismissed.

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). 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).

Here, as noted above, Complainant seeks to attack the Subject Judge's dismissal of two prior complaints of misconduct. Such allegations are clearly merits-related and are not cognizable 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 3(h)(3)(A), Rules for Judicial-Conduct and Judicial-Disability Proceedings; Commentary on Rule 3 ("Any allegation that calls into question the correctness of an official action of a judge -- without more -- is merits-related. The phrase 'decision or procedural ruling' is not limited to rulings issued in deciding Article III cases or controversies. Thus, a complaint challenging the correctness of a chief judge's determination to dismiss a prior misconduct complaint would be properly dismissed as merits-related . . . ."); 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).

Finally, a copy of this Memorandum Opinion and Order will be transmitted to the Judicial Council to determine whether to issue an order to show cause why Complainant should not be enjoined from filing any further complaints under the Judicial Conduct and Disability Act. See Rule 10(a), Rules for Judicial-Conduct and Judicial-Disability Proceedings.[3] As noted above, Complainant has filed multiple complaints under the Act; all of his complaints have been dismissed because they were merits-related and frivolous. See J.C. Nos. J.C. Nos. 91-06, 91-07, 91-08, 91-09, 91-15, 91-16, 91-17, 91-18, 03-08-90077, 03-08-90079, 03-09-90074, 03-09-90075.[4] Complainant was previously warned that future abuse of the complaint procedure could result in the imposition of sanctions under Rule 10(a), Rules for Judicial-Conduct and Judicial-Disability Proceedings. Nonetheless, Complainant proceeded to file the instant merits-related complaint.

For the foregoing reasons, the complaint is dismissed pursuant to 28 U.S.C.

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[3] Rule 10(a) of the Rules of Judicial-Conduct and Judicial-Disability Proceedings provides as follows:

> 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.

[4] One of the foregoing complaints was concluded in view of the Subject Judge's retirement. The memorandum opinion nonetheless observed that the allegations were "plainly frivolous."

§ 352(b)(1)(A)(ii). The Clerk is directed to transmit a copy of this Memorandum Opinion and Order to the Judicial Council for consideration of whether or not to issue an order to show cause in accordance with Rule 10(a) of the Rules of Judicial-Conduct and Judicial-Disability Proceedings.

/s/ Marjorie O. Rendell
Circuit Judge

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. No. 03-10-90099

IN RE: COMPLAINT OF JUDICIAL MISCONDUCT
OR DISABILITY

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

ORDER

(Filed: June 2, 2011)

PRESENT: RENDELL, 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 under 28 U.S.C. § 352(b)(1)(A)(ii). The Clerk is directed to transmit a copy of this Memorandum Opinion and Order to the Judicial Council for consideration of whether or not to issue an order to show cause in accordance with Rule 10(a) of the Rules of Judicial-Conduct and Judicial-Disability Proceedings.

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:

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

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/ Marjorie O. Rendell
Circuit Judge

Dated: June 2, 2011