

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. No. 03-14-90053

IN RE: COMPLAINT OF JUDICIAL MISCONDUCT
OR DISABILITY

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

MEMORANDUM OPINION

(Filed: October 8, 2014)

PRESENT: RENDELL, Circuit Judge.¹

This complaint is 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).

Complainant is a state prisoner. In October 2013, he filed a complaint of judicial misconduct against the District Judge presiding over his federal petition for a writ of

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

habeas corpus. The Subject Judge dismissed the misconduct complaint against the District Judge pursuant to 28 U.S.C. § 352(b)(1)(A)(i), (ii), and (iii). Complainant filed a timely petition for review of the Subject Judge's decision. The Judicial Council amended the Subject Judge's opinion to correct a typographical error, concluded that Subject Judge's decision should be affirmed, and denied the petition for review.

In the instant complaint of judicial misconduct, Complainant re-argues the merits of his habeas petition. He alleges that he is not guilty of the crime of which he was convicted, that his habeas petition had merit, and that both the District Judge and the Subject Judge committed egregious error by failing to agree with his position. Complainant also reiterates the allegations of his first complaint of judicial misconduct and states that, in dismissing that misconduct complaint, the Subject Judge "feigned review of JC Complaint, removing any accountability from" the District Judge named in that complaint. Complainant further alleges that the Subject Judge "is covering up for [the District Judge], as [the District Judge] covers for [state] trial and appellate judges." Complainant states that "[the Subject Judge] is not authority, but only a representative of public authority" and alleges that, until the Subject Judge accepts Complainant's position, "[the Subject Judge] is not in good behavior."

Because Complainant takes issue with findings and conclusions reached by the Subject Judge in the course of the prior misconduct proceeding, the allegations are merits-related. "An allegation that calls into question the correctness of a judge's ruling . . . is merits-related." Rule 3(h)(3)(A), Rules for Judicial-Conduct and Judicial-Disability

Proceedings. This rule applies to allegations concerning rulings rendered in the course of a judicial misconduct proceeding. See Commentary to Rule 3, Rules for Judicial-Conduct and Judicial-Disability Proceedings (“[A] complaint challenging the correctness of a chief judge’s determination to dismiss a prior misconduct complaint would be properly dismissed as merits-related . . . even though it does not concern the judge’s rulings in Article III litigation.”). A disagreement with the merits of a judicial ruling does not give rise to cognizable misconduct. 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.

Complainant already pursued a proper challenge to the Subject Judge’s disposition of the prior misconduct complaint by filing a petition for review with the Judicial Council pursuant to Rule 18, Rules for Judicial-Conduct and Judicial-Disability Proceedings. The Judicial Council’s order resolving the petition is final and conclusive, and is not reviewable on appeal or otherwise. Complainant’s attempt to again challenge the decision by filing a new misconduct complaint is inappropriate. 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.

When considered apart from the merits-related allegations, Complainant's claims of a "cover-up" or some sort of conspiracy involving the Subject Judge are unsupported. The record reveals nothing whatsoever to support these accusations. Accordingly, Complainant's remaining 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.

For the foregoing reasons, this complaint is dismissed pursuant to 28 U.S.C. § 352(b)(1)(A)(ii) and (iii). Complainant's attention is directed to Rule 10(a), Rules for Judicial-Conduct and Judicial-Disability Proceedings.² Complainant is cautioned that future abuse of the judicial misconduct complaint procedure may result in the imposition of restrictions under that rule.

s/ Marjorie O. Rendell
Circuit Judge

² Rule 10(a), Rules for Judicial-Conduct and Judicial-Disability Proceedings, states:

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.

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ORDER

(Filed: October 8, 2014)

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) 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.

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

Rule 18(b) Time. A petition for review must be filed in the Office of the Circuit Executive of the Court of Appeals within **35 days** of the date on the letter informing the parties of the Chief Judge's order.

18(b) Form. The petition should be in letter form, addressed to the Circuit Executive 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 Office of the Circuit Executive 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: October 8, 2014