

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. Nos. 03-14-90058, 03-14-90059, 03-14-90060

IN RE: COMPLAINT OF JUDICIAL MISCONDUCT
OR DISABILITY

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

MEMORANDUM OPINION

Filed: September 25, 2014

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 (“Subject Judge I”) and two United States Circuit Judges (“Subject Judge II” and “Subject Judge III”).¹ 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

¹ Complainant also identified an additional Circuit Judge, who is deceased. As Complainant was informed, complaints under the Judicial Conduct and Disability Act may only be filed against judges currently holding an office described in Rule 4 of the Rules for Judicial-Conduct and Judicial-Disability Proceedings. See Rule 8(c), Rules for Judicial-Conduct and Judicial-Disability Proceedings. Accordingly, the complaint was not accepted as to the deceased judge.

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 federal prisoner. In 1998, he filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2241, challenging the execution of his sentence. The petition was assigned to Subject Judge I, who denied the petition. Complainant moved for reconsideration, which Subject Judge I also denied. Complainant appealed the decisions. In 2001, a panel of three Circuit Judges, which included Subject Judges II and III, affirmed Subject Judge I's decisions. Complainant filed a petition for a writ of certiorari in the United States Supreme Court, which was denied. Since then, Complainant has filed numerous challenges in the District Court and the Court of Appeals raising the same or similar arguments concerning the execution of his sentence. These efforts have been unsuccessful.

In this complaint of judicial misconduct, Complainant reiterates the basis for his habeas petition. He argues, "my federal detention was illegal because federal prison officials executed the federal term without due process of law, and illegally caus[ed] me to serve the federal term in piecemeal fashion." Complainant contends that Subject Judge I neglected to address portions of the habeas petition, and that Subject Judge I erroneously denied relief. Complainant further alleges that the panel of the Court of Appeals including Subject Judges II and III "deliberately gathered facts outside the record of the habeas corpus proceedings," and therefore erred in affirming Subject Judge I's decision.

Complainant concludes by stating that, due to these alleged errors in the course of his habeas proceeding, “I have been illegally detained by federal officials since 1995.”

Clearly, this complaint of judicial misconduct is an attempt to collaterally challenge the decisions and rulings and rulings rendered by the Subject Judges. The allegations therefore are entirely 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.

It is apparent that Complaint is attempting to re-argue underlying claims that were previously presented to and considered by the courts in the course of Complainant’s prior challenges to the execution of his sentence. This administrative forum does not permit Complainant another bite at this apple. 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).

The allegations of this complaint are merits-related and therefore are not cognizable as judicial 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. The complaint is dismissed pursuant to 28 U.S.C. §§ 352(b)(1)(A)(ii).

s/ Theodore A. Mckee
Chief Judge

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. Nos. 03-14-90058, 03-14-90059, 03-14-90060

IN RE: COMPLAINT OF JUDICIAL MISCONDUCT
OR DISABILITY

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

ORDER

Filed: September 25, 2014

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).

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: September 25, 2014