

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. No. 03-14-90091

IN RE: COMPLAINT OF JUDICIAL MISCONDUCT
OR DISABILITY

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

MEMORANDUM OPINION

(Filed: March 25, 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).

Several years ago, Complainant was convicted in a District Court outside this jurisdiction on charges of harassing a former state governor and her attorneys. While on

supervised release, Complainant was transferred to a location within this jurisdiction. Complainant objects to the transfer. Recently, his probation officer filed a petition to modify the terms of the supervised release – specifically, to schedule a mental health assessment and treatment. The matter has been assigned to the Subject Judge and is ongoing.

In this complaint of judicial misconduct, Complainant alleges that the Subject Judge “violated my due process rights” in order “to attain a higher personal goal to protect members of his own political party” – namely, the same political party as that of the former state governor whom Complainant was convicted of harassing. Complainant alleges that the Subject Judge “was out of line and committed a[n] illegal act by signing on to my probation transfer, as I had never given consent for such a transfer.” Complainant further alleges that the Subject Judge conspired with a district judge from outside this jurisdiction “to make a scheme to make my probation transfer . . . appear legal, and appear to have my consent.”

Complainant speculates that the Subject Judge was motivated to participate in this alleged conspiracy because he “spent years as a [political] party official,” and the former state governor (a member of the same political party) “is a large contributor to [political] candidates.” Complainant queries, “Is this why [the Subject Judge] was so eager to commit judicial misconduct by presiding over this illegal transfer of my probation supervision?” Complainant provides documentary exhibits that, he contends, reflect that the senator who nominated the Subject Judge to the federal bench was endorsed by the

former state governor, and received donations from her political action committee.

Complainant demands the Subject Judge's recusal and the re-transfer of his case to the former jurisdiction.

Complainant is clearly attempting to collaterally challenge his transfer to this jurisdiction. It appears that the transfer was requested by a parole officer and was ordered by a district judge outside this jurisdiction who is not a subject of this proceeding. The Subject Judge merely accepted the transfer. To the extent these allegations implicate the Subject Judge, they are 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 . . . 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).

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). Complainant's merits-related allegations are therefore subject to dismissal.

In addition, to the extent Complainant seeks the Subject Judge's recusal from the probation modification proceeding, such a request is inappropriate in a judicial misconduct action. The proper course is to file a motion for recusal in the District Court, so the Subject Judge may address it in the first instance. Moreover, a decision on a recusal motion is merits-related and therefore is not cognizable misconduct. See Rule 3(h)(3)(A), Rules for Judicial-Conduct and Judicial-Disability Proceedings.

Finally, Complainant's non-merits-related allegations of a "conspiracy" based upon an allegedly improper political affiliation between the Subject Judge and a former state governor are based upon improbable speculation and conjecture, and are far from sufficient to give rise to an inference that misconduct has occurred. Accepting Complainant's allegations that the former state governor's political action committee provided campaign donations to the senator who nominated the Subject Judge to the federal bench, such facts, without more, are far too tenuous to give rise to a reasonable inference that the Subject Judge has any inappropriate political ties to the former state governor. Moreover, the former state governor has no role whatsoever in Complainant's probation modification proceeding before the Subject Judge. Accordingly, Complainant's remaining allegations are subject to dismissal as frivolous and unsupported by any 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, 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: March 25, 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: March 25, 2015