

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. No. 03-14-90093

IN RE: COMPLAINT OF JUDICIAL MISCONDUCT
OR DISABILITY

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

MEMORANDUM OPINION

Filed: January 26, 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).

Complainant pleaded guilty to charges of distribution of child pornography. Although he later moved to withdraw the guilty plea, the Subject Judge denied the motion

and sentenced Complainant to a lengthy term of imprisonment. Complainant appealed and the Court of Appeals affirmed the judgment. Complainant filed numerous post-judgment motions, which the Subject Judge denied. Eventually, the Subject Judge issued an order directing that, with the exception of a motion under 28 U.S.C. § 2255, Complainant must seek court leave before filing further motions. Complainant continued to file motions, including numerous recusal motions. The Chief Judge of the District Court reassigned Complainant's case to a new District Judge. Complainant renewed several of his motions, which remain pending.

In this complaint of judicial misconduct, Complainant alleges that the government violated the terms of his plea agreement and, when Complainant brought this information to the attention of the Subject Judge, he “baselessly ordered me to seek leave of court before filing additional motions . . . , then simply ‘declined’ to grant relief. . . .”

Complainant alleges that the Subject Judge “should have recused himself both before he violated my binding plea agreement and before he upheld his own violations.” Based upon these allegations, Complainant claims the Subject Judge “single-handedly collapsed the judicial integrity of your federal district by railroading a witch-hunt charge and perpetuating the – mass incarceration, prison-industrial complex – police state.”

Complainant therefore calls for the Subject Judge's resignation or impeachment.

It is apparent that Complainant's allegations primarily reflect his disagreement with the Subject Judge's decisions in the course of the criminal proceeding. Accordingly, they are 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. Merits-related allegations are not 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). Such allegations are therefore dismissed.

Moreover, this proceeding is not an appropriate forum for raising merits-related allegations, nor does it provide a means to collaterally attack a criminal sentence. 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). Indeed, Complainant has appealed a number of the Subject Judge’s post-judgment decisions, including the order limiting Complainant’s right to file motions. That appeal remains pending.

When considered apart from the merits-related allegations, Complainant’s remaining allegations are unsupported. The record in Complainant’s proceeding reveals nothing to substantiate any claims of impropriety. Accordingly, Complainant’s remaining

non-merits-related 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).¹ As this is Complainant's second complaint of judicial misconduct to be dismissed under these provisions, see J.C. Nos. 03-12-90019, 03-12-00020, Complainant's attention is directed to Rule 10(a), Rules for Judicial-Conduct and Judicial-Disability Proceedings, concerning abuse of the complaint procedure.² Future

¹ Complainant raises additional allegations concerning the Subject Judge, including claims of fraud and obstruction of justice, in a supplement to the complaint that was not submitted under penalty of perjury. See Rule 6, Rules for Judicial-Conduct and Judicial-Disability Proceedings. I have considered these allegations and conclude they do not provide "reasonable grounds for inquiry" into the existence of misconduct. I therefore decline to identify any complaints based on these allegations. Rule 5, Rules for Judicial-Conduct and Judicial-Disability Proceedings.

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.

abuse of the misconduct procedures could result in the imposition of sanctions under that rule.

s/ Theodore A. McKee
Chief Judge

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ORDER

Filed: January 26, 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: January 26, 2015