

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. No. 03-14-90101

IN RE: COMPLAINT OF JUDICIAL MISCONDUCT
OR DISABILITY

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

MEMORANDUM OPINION

Filed: March 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 is a defendant in a criminal proceeding before the Subject Judge. Shortly after indictment, Complainant declined the assistance of court-appointed counsel

and decided to proceed pro se. He filed a motion to dismiss the indictment on the grounds of vindictive and selective prosecution, and a motion for the Subject Judge's recusal based on allegations of bias. The Subject Judge held a hearing and ultimately denied both motions. Shortly thereafter, during a hearing, Complainant waived his right to a jury trial and requested a bench trial. The Subject Judge granted the motion. A bench trial has not yet been scheduled.

In this Complaint of judicial misconduct, Complainant alleges that the Subject Judge "aided and abetted" an Assistant United States Attorney ("AUSA") by "suborn[ing] perjury." Specifically, Complainant alleges that the AUSA "fabricated the exist[ence] of a witness" in order to establish probable cause for Complainant's arrest, and that the AUSA has become "a stocking horse against this defendant." Complainant states "the above mention facts has been brought to [the Subject Judge's] attention. [The Subject Judge] refuse to be impartial and refuse to ministry [*sic*] justice."

To the extent Complainant's allegations concern alleged wrongdoing by the AUSA rather than the Subject Judge, an AUSA is not covered by the Judicial Conduct and Disability Act or by the Rules for Judicial-Conduct and Judicial-Disability Proceedings. A complaint filed under the Rules "may concern the actions or capacity **only of judges**" Rule 4, Rules for Judicial-Conduct and Judicial-Disability Proceedings (emphasis added). Thus, allegations concerning the AUSA will not be addressed in this opinion. See 28 U.S.C. §§ 351, 352(b)(1)(A)(i); Rule 4, Rules for Judicial-Conduct and Judicial-Disability Proceedings.

It is apparent that the allegations of this complaint are largely merits-related. Complainant previously presented the same allegations to the Subject Judge in the motions to dismiss the indictment and for recusal. The Subject Judge conducted a hearing on these issues and entered a lengthy and detailed memorandum opinion and order denying Complainant's motions. Complainant is now attempting to collaterally challenge those decisions. "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.

This administrative proceeding not the appropriate forum for raising such allegations, as they 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). To the extent Complainant wishes

to seek review of the merits of the Subject Judge's decisions and rulings, including the decisions to deny the motion to dismiss the indictment and to recuse, he must do so in the course of an appropriately-filed proceeding in the Court of Appeals. Because they are not cognizable in this matter, Complainant's merits-related allegations are dismissed.

When considered apart from his merits-related allegations, it is clear that Complainant's claims of partiality and of suborning perjury are entirely unsupported. Accordingly, any 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)(i), (ii), and (iii).

s/ Theodore A. McKee
Chief Judge

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ORDER

Filed: March 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)(i), (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 26, 2015