

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. Nos. 03-15-90020; 03-15-90059; 03-15-90060; 03-15-90069

IN RE: COMPLAINTS OF JUDICIAL MISCONDUCT
OR DISABILITY

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

MEMORANDUM OPINION

Filed: August 13, 2015

PRESENT: McKEE, Chief Judge.

These three complaints are filed under the Judicial Conduct and Disability Act, 28 U.S.C. §§ 351-64, against a United States District Judge (the “Subject Judge”).¹ For the reasons discussed below, the complaints 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).

¹ Several months after he filed the second complaint, docketed at J.C. No. 03-15-90059, Complainant re-sent a copy of the same complaint with a cover letter specifically directing that it be treated as a “separate and independent complaint.” Accordingly, the duplicate copy was assigned a separate docketing number. See J.C. No. 03-15-90069.

Complainant, a federal prisoner, filed two civil rights complaints in District Court challenging his underlying criminal conviction. The first complaint alleged ineffective assistance by his criminal defense attorney; the second challenged the validity of his plea agreement. Both matters were assigned to the Subject Judge. The Subject Judge issued a single order concluding that the complaints both constituted successive motions under 28 U.S.C. § 2255 and that Complainant had failed to obtain the necessary permission from the Court of Appeals under 28 U.S.C. § 2244 in order to pursue them. Accordingly, he dismissed both complaints for lack of subject matter jurisdiction. Complainant filed a notice of appeal. The Court of Appeals denied a certificate of appealability.²

In the first complaint, Complainant alleges that the Subject Judge stated in the memorandum opinion dismissing the complaints that he reviewed Complainant's plea colloquy in reaching his decision. Complainant alleges that he attempted to obtain a copy of that transcript from the U.S. Attorney's Office pursuant to the Freedom of Information Act and was informed that "the District did not locate a copy of the Plea Sentencing Transcript in the file." Based upon this, Complainant concludes that the Subject Judge was "reviewing something that at this point in time does not exist upon the public record." Complainant therefore alleges that the Subject Judge has "falsifie[d] actions" and has

² Complainant previously filed a complaint of judicial misconduct concerning the Subject Judge's oversight of the same two District Court proceedings. I dismissed the prior complaint on March 25, 2015 as merits-related, frivolous, and unsupported by evidence of misconduct. See J.C. No. 03-14-90102. Complainant petitioned for review of the decision. The Judicial Council denied the petition and that matter is concluded.

therefore failed to “support and honorable judiciary” and to “promote confidence in the integrity of the judiciary.”

In the second complaint, Complainant alleges that the Subject Judge erred in the dismissal order when he concluded that 28 U.S.C. § 2255 applied to the case. According to Complainant, he filed the action under the Freedom of Information Act, 5 U.S.C. § 552. Complainant alleges that the Subject Judge’s decision not apply the FOIA statute and thereby block[]” the case by “fail[ing] to address the case via adjudication on the merits” is “dishonest” and lacks “legal foundation.” Complainant argues that the Subject Judge “is required to adjudicate the case on the merits.”

Finally, in the third complaint, Complainant takes issue with a statement in the Subject Judge’s dismissal order to the effect that his complaints failed to set forth a clear basis for the District Court’s jurisdiction. Complainant argues that he did indeed present a clear statement of jurisdiction, and that the Subject Judge’s statement to the contrary “is knowingly and materially false, fictitious and [a] mis-representation of material facts.” He further alleges that the Subject Judge wrongfully failed to liberally construe his pro se complaints.

These allegations are largely merits-related, inasmuch as they reflect a basic disagreement with the Subject Judge’s decision to dismiss the complaints. “An allegation that calls into question the correctness of a judge’s ruling . . . without more, is merits-related.” Rule 3(h)(3)(A), Rules for Judicial-Conduct and Judicial-Disability Proceedings. This judicial misconduct proceeding is not an appropriate forum for raising merits-related

allegations. Indeed, Complainant already has pursued an unsuccessful appeal of the Subject Judge's dismissal order. 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).

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). Accordingly, these allegations are dismissed.

Complainant's sole non-merits-related allegation is his claim that the Subject Judge improperly reviewed the transcript of Complainant's plea colloquy, which, he alleges, "does not exist upon the public record." Complainant is mistaken in this conclusion. Complainant's apparently unsuccessful effort to obtain copies of transcripts through the U.S. Attorney's office via a FOIA request does not reasonably lead to a conclusion that the transcripts do not exist; rather, it indicates that the U.S. Attorney's office did not choose to retain that particular document after its work on the case concluded. The transcript remains a publicly available court record, which may be obtained by a request

directed to the District Court Clerk's office. Accordingly, this allegation is dismissed as frivolous and unsupported by evidence that would raise an inference that misconduct 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, these complaints are dismissed pursuant to 28 U.S.C. §§ 352(b)(1)(A)(ii) and (iii). As previously mentioned, Complainant filed a prior misconduct complaint against this Subject Judge concerning the same proceedings, which also was dismissed under these provisions. See J.C. No. 03-14-90102. Complainant's attention is directed to Rule 10(a), Rules for Judicial-Conduct and Judicial-Disability Proceedings.³ Complainant is strongly cautioned that future abuse of the judicial misconduct complaint procedure may result in the imposition of restrictions under that rule.

s/ Theodore A. McKee
Chief Judge

³ 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.

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. Nos. 03-15-90020; 03-15-90059; 03-15-90060; 03-15-90069

IN RE: COMPLAINTS OF JUDICIAL MISCONDUCT
OR DISABILITY

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

ORDER

Filed: August 13, 2015

PRESENT: McKEE, Chief Judge.

On the basis of the foregoing opinion entered on this date, it is ORDERED AND ADJUDGED that the written complaints brought pursuant to 28 U.S.C. § 351 are 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: August 13, 2015