

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. No. 03-15-90027

IN RE: COMPLAINT OF JUDICIAL MISCONDUCT
OR DISABILITY

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

MEMORANDUM OPINION

(Filed: August 24, 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).

In 2009, Complainant, through counsel, filed a petition for a writ of habeas corpus. The matter was referred to a Magistrate Judge who is not named as a Subject Judge in this proceeding. In 2012, Complainant filed a motion to change the case caption and proceed

by initials only, on the grounds that the allegations raised in the habeas petition might put him in danger from other inmates. The Magistrate Judge granted the motion but noted that she would not seal the documents and that anything previously filed in the case would continue to bear Complainant's full name in the caption. The Magistrate Judge has not yet issued a report and recommendation in the matter and the petition remains pending.

In 2013, Complainant filed a second counseled petition for a writ of habeas corpus, which was assigned to the Subject Judge. Complainant moved to seal documents in the case or, in the alternative, for a protective order. Complainant did not move to change the caption and proceed by initials only. The Subject Judge denied the motion to seal. Complainant filed a pro se motion to recuse the Subject Judge, which the Subject Judge struck because Complainant is represented by counsel. Counsel did not file a recusal motion on Complainant's behalf. The habeas petition remains pending before the Subject Judge.

In this Complaint of judicial misconduct, Complainant alleges that the Subject Judge "knowingly and maliciously acted in bad faith, and did so with malice" by issuing an order that reflected Complainant's full name on the case caption and discussed his crimes, in Complainant's view, in unnecessary detail. Complainant contends that the Subject Judge "intentionally circumvent[ed]" the Magistrate Judge's order issued in the separate, previously-filed habeas proceeding, and that the Subject Judge did so due to "a personal bias and/or prejudice against this Complainant" because she allegedly "[knew] said Order would likely endanger Complainant's health and safety. . . ." Complainant

theorizes that the alleged bias stems from the Subject Judge's participation in a conspiracy with "political cronies," including attorneys in the District Attorney's office.

Complainant states that he moved for the Subject Judge's recusal on these same grounds, that he intends to bring a civil rights complaint naming the Subject Judge, and that he has contacted the Department of Justice to seek an investigation into his claims. He further states that he "will not stop his pursuit of this judge until her actions are publicly known, and is officially off this Complainant's case."

It is clear that Complainant disagrees with the Subject Judge's decision not to seal his case and to issue an opinion which reveals both his full name and the nature of his crimes. This is a merits-related dispute. "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 an appropriate forum for raising such disputes because 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). Complainant may discuss with counsel whether there are appropriate avenues in which he may challenge the merits of the Subject Judge's rulings. It is clear,

however, that this administrative proceeding is not one of them. 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). Accordingly, Complainant’s merits-related allegations are dismissed.

When considered apart from the merits-related allegations, there is no evidence whatsoever to substantiate Complainant’s claims that the Subject Judge is involved in a conspiracy or that she harbors a bias against him. Indeed, although Complainant has presumed that his counsel requested the same relief from the Subject Judge that he was previously granted by the Magistrate Judge in the earlier habeas proceeding, this does not appear to be the case. As a factual matter, the record does not show that Complainant moved to amend the caption and proceed by his initials only, as he did before the Magistrate Judge. Because there is no record support for Complainant’s remaining non-merits-related allegations, they are subject to dismissal as frivolous and unsupported by 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). In light of Complainant’s statement that he will continue to pursue these claims until the Subject Judge is recused from his habeas proceeding,

Complainant's attention is directed to Rule 10(a), Rules for Judicial-Conduct and Judicial-Disability Proceedings.¹ Complainant is cautioned that abuse of the judicial misconduct complaint procedure, including repetitive filing of substantially similar complaints, may result in the imposition of restrictions under that rule.

s/ Theodore A. McKee
Chief Judge

¹ 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.

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ORDER

(Filed: August 24, 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: August 24, 2015