

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. No. 03-15-90081

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).

Complainant was a defendant in a criminal proceeding before the Subject Judge in which he was accused of taking hostages and attempting to extort millions of dollars from a casino. He pleaded guilty and the Subject Judge sentenced him to a lengthy term of

imprisonment. On appeal, the Court of Appeals affirmed the judgment. He filed a motion to vacate, set aside, or correct the sentence under 28 U.S.C. § 2255, which the Subject Judge denied.

Complainant states that he has filed this complaint of judicial misconduct against the Subject Judge “because of his continued abuse of judicial authority, specifically his actions and conduct pertaining to my sentencing and subsequent appeal.” First, Complainant alleges a “direct and long existing connection” between the Subject Judge and the casino industry, including the casino that Complainant was accused of attempting to extort. Complainant contends that, prior to taking the bench, the Subject Judge’s former career included leading a casino association and providing legal representation to casinos. Complainant alleges this constitutes “a direct and unquestioned conflict of interest” and that the Subject Judge therefore should have recused himself from Complainant’s criminal proceeding.

Second, Complainant alleges the Subject Judge “has made dubious decisions throughout the entire judicial process of my hearing(s) and sentencing.” Among other things, Complainant alleges the Subject Judge “allowed and ruled on charges that he knew were not justified,” “oversaw the withholding and altering/destroying of key evidence,” and permitted “bogus enhancements” to Complainant’s sentence. Complainant further contends the Subject Judge violated his constitutional rights by “refusing to rule on my 2255 appeal.” Complainant alleges the Subject Judge “openly stated to his law clerk . . . that he will never rule on my appeal.” Complainant notes that the § 2255 motion raised

the same allegations concerning the Subject Judge's alleged ties to the casino industry and therefore theorizes that the Subject Judge "is abusing his position to keep the knowledge of his actions from ever becoming known."

Complainant's mother filed a similar complaint of judicial misconduct against the Subject Judge. See J.C. No. 03-15-90014. After conducting a limited inquiry, I dismissed that complaint as merits-related. Complainant's mother did not file a petition for review of the decision and that matter is concluded.

Complainant's arguments concerning the Subject Judge's decisions and rulings, including evidentiary decisions and sentencing, are all clearly merits-related allegations. Rule 3(h)(3)(A), Rules for Judicial-Conduct and Judicial-Disability Proceedings. This administrative proceeding is not a proper forum for pursuing a collateral challenge to his criminal sentence. Indeed, Complainant already has challenged his sentence in his direct criminal appeal and the Court of Appeals affirmed the judgment. 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 judicial misconduct. See 28 U.S.C. § 352(b)(1)(A)(ii); Rules 3(h)(3)(A), 11(c)(1)(B), Rules for Judicial-Conduct and Judicial-Disability Proceedings. Accordingly, these merits-related

allegations are dismissed. See 28 U.S.C. § 352(b)(1)(A)(ii); Rules 3(h)(3)(A), 11(c)(1)(B), Rules for Judicial-Conduct and Judicial-Disability Proceedings.

Similarly, the allegation that the Subject Judge should have recused himself due to his alleged association with the casino industry is 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. Moreover, as he acknowledges, Complainant presented this same argument in his motion to vacate, set aside, or correct the sentence under 28 U.S.C. § 2255.

Although it appears Complainant may not be aware of the decision, when Complainant filed this complaint of misconduct, the Subject Judge already had issued a decision denying the § 2255 motion.¹ In that decision, the Subject Judge acknowledged his prior work with a casino association, but observed that the professional relationship had “long since terminated by the time the Court presided over Petitioner’s case,” and that the casino was not a party to the criminal proceeding in any event. The Subject Judge therefore concluded that recusal was not warranted. These findings and conclusions are not subject to review in this matter, and must be dismissed as merits-related. See 28

¹ The decision denying the § 2255 motion was entered in mid-June 2015. About a week later, there is a docket note entered by a Clerk’s office employee that Complainant’s copy of the order was returned as undeliverable mail. It appears Complainant may have been moved to a different facility and did not advise the court of a change of address. This complaint of misconduct initially was filed at around the same time that the §2255 motion was denied (in June 2015) but the complaint was unsigned. Complainant filed a signed complaint the following month.

U.S.C. § 352(b)(1)(A)(ii); Rules 3(h)(3)(A), 11(c)(1)(B), Rules for Judicial-Conduct and Judicial-Disability Proceedings.

When considered apart from the merits-related allegations, there is no evidence to substantiate Complainant's claims that the Subject Judge is biased against him. As a factual matter, the record demonstrates there is no truth to the allegations that the Subject Judge would "never rule" on the § 2255 motion or was refusing to render a decision because he was attempting to conceal Complainant's allegations. Rather, the Subject Judge *did* render a decision and it appears Complainant simply may have been unaware of it at the time he drafted this complaint. 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).

s/ Theodore A. McKee
Chief Judge

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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