

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. No. 03-15-90097

IN RE: COMPLAINT OF JUDICIAL MISCONDUCT
OR DISABILITY

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

MEMORANDUM OPINION

(Filed: January 7, 2016)

PRESENT: McKEE, Chief Judge.

This is a complaint 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. He pleaded guilty to one count of the indictment and the Subject Judge sentenced him to a lengthy term of imprisonment. Complainant appealed and the Court of Appeals affirmed the judgment. Complainant filed a motion to set aside, vacate, or correct the sentence under 28 U.S.C. § 2255. The Subject Judge denied the motion and the Court of Appeals declined to issue a certificate of appealability. Complainant filed for relief under Fed. R. Civ. P. 60(b). The Subject Judge denied the motion. Complainant's appeal from that decision remains pending.

In this complaint of judicial misconduct, Complainant alleges the Subject Judge "has allowed his personal prejudices to influence his decision making process." Specifically, Complainant argues that the Subject Judge violated the Suspension Clause of the Constitution because "he suspended my right to a competency determination and my right not to be sentenced or incarcerated while incompetent." Complainant states that he presented "clear and convincing evidence of my incompetence during the critical stages of [the] prosecution," but the Subject Judge allegedly "disregarded" the evidence and Complainant's rights by "refus[ing] to take corrective action." Complainant speculates that the decision not to hold a competency hearing demonstrates the Subject Judge's "prejudices toward the mentally-ill" or possibly "me personally, my family, or my law enforcement background."

Complainant further alleges that the Subject Judge is responsible for failing to protect his right to counsel, because Complainant's retained counsel "without warning,

abandoned his representation of me” due to “his suffering from terminal brain cancer which claimed his life later that year.” Finally, Complainant alleges the Subject Judge “abused his authority by suspending the constitutional rights of my nine-year-old children” by “order[ing] a daily restriction on their usage of the internet.”

Complainant specifically directs my attention to three motions and two court memorandum opinions and orders. He states that these record documents support his complaint of misconduct against the Subject Judge.

Considering the documents specified by Complainant as well as the record as a whole, this complaint of judicial misconduct should be dismissed. The majority of the allegations merely reflect Complainant’s disagreement with the Subject Judge’s decisions and rulings in the course of the criminal proceeding, and are therefore merits-related. “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. 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).

Moreover, Complainant already has had the opportunity to present his arguments. For instance, he raised nearly all of these claims as a basis for habeas relief in his § 2255 motion. On appeal from the denial of that motion, the Court of Appeals concluded that Complainant failed to make a substantial showing of a denial of a constitutional right. In addition, Complainant also presented similar arguments in his motion under Fed. R. Civ. P. 60(b). That decision is currently on appeal. This administrative proceeding does not provide Complainant another opportunity to re-litigate the same claims that were, or soon will be, decided by the Court of Appeals. 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 must be dismissed.

Complainant’s claims of bias on the part of the Subject Judge, either against Complainant personally or mentally ill individuals generally, are based upon nothing more than speculation and subjective belief. Complainant provides no support for his contentions apart from his basic disagreement with the merits of decisions and rulings rendered in the course of his case, which, as previously observed, do not constitute misconduct. The record in this matter does not give rise to an inference that misconduct has occurred. Accordingly, Complainant’s allegations of bias are dismissed 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).

s/ Theodore A. McKee
Chief Judge

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ORDER

(Filed: January 7, 2016)

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 Circuit Executive within **42 days** after the date of the chief judge's order.

18(b) Form. The petition should be in letter form, addressed to the Circuit Executive, 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 Office of the Circuit Executive and on the Court of Appeals’ internet site, www.ca3.uscourts.gov.

s/ Theodore A. McKee
Chief Judge

Dated: January 7, 2016