

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. No. 03-16-90015

IN RE: COMPLAINT OF JUDICIAL MISCONDUCT
OR DISABILITY

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

MEMORANDUM OPINION

(Filed: April 18, 2016)

PRESENT: AMBRO, Circuit Judge.¹

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).

¹ Acting as chief judge for purposes of disposition of this complaint, pursuant to Rule 25(f), Rules for Judicial-Conduct and Judicial-Disability Proceedings.

Complainant was a defendant in a criminal proceeding before the Subject Judge. Approximately eight years ago, she pleaded guilty to one count of the indictment and accepted a plea agreement that included a waiver of her right to appeal or collaterally challenge her sentence except in limited circumstances. The Subject Judge sentenced her to a lengthy term of imprisonment and, because the crime involved harm to minor children, barred complainant from further contact with her four children.

Despite the waiver provision, Complainant filed an appeal, which was dismissed. In the years since her conviction, she has also filed a motion to vacate, set aside, or correct her sentence under 28 U.S.C. § 2255, motions to withdraw her guilty plea, and motions challenging the no-contact provision of her sentence, all of which the Subject Judge denied. Complainant filed several unsuccessful appeals from those decisions.

In this complaint of judicial misconduct, Complainant alleges she was not of sound mind during the time of her arrest and guilty plea because she suffers from mental illness and was taking mind-altering medications. She further alleges she had ineffective assistance of counsel and her court-appointed attorney “mentally coerced” her into accepting the plea agreement.

With regard to the Subject Judge, Complainant alleges he erroneously prohibited Complainant from contact with her children because two of them were over the age of majority; she contends the allegedly improper no-contact provision “makes this a[n] illegal sentence.” In addition, because the Subject Judge denied her § 2255 motion and

her motions to withdraw the plea and challenge the no-contact order, Complainant states, “I feel [the Subject Judge] is prejudice[d]/bias[ed] . . . and denied whatever I file.”

Complainant argues, “I am thinking clearly now, and want a chance to prove my innocence.”

Complainant’s claims concerning actions by her court-appointed attorney will not be addressed in this opinion. A private attorney is not covered by the Judicial Conduct and Disability Act. The attorney’s alleged misconduct is therefore beyond the scope of this proceeding. See 28 U.S.C. §§ 351, 352(b)(1)(A)(i); Rule 4, Rules for Judicial-Conduct and Judicial-Disability Proceedings.

The majority of Complainant’s allegations concerning the Subject Judge are intended to challenge her sentence, including the provision prohibiting contact with her children. Such allegations are 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.

This administrative proceeding is not an appropriate forum in which to collaterally attack the merits of a criminal sentence. Indeed, Complainant already has challenged her sentence in both the District Court and the Court of Appeals; she may not do so again here. 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, all of Complainant's merits-related allegations are dismissed.

When considered apart from the merits-related allegations, it is clear that Complainant's claims of bias and prejudice on the part of the Subject Judge are off the mark. These allegations are therefore dismissed 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.

Based on the foregoing, the complaint is dismissed pursuant to 28 U.S.C. §§ 352(b)(1)(A)(i), (ii), and (iii).

s/ Thomas Ambro
Circuit Judge

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ORDER

(Filed: April 18, 2016)

PRESENT: AMBRO, Circuit Judge.¹

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

¹ Acting as chief judge for purposes of disposition of this complaint, pursuant to Rule 25(f), Rules for Judicial-Conduct and Judicial-Disability Proceedings.

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/ Thomas Ambro
Circuit Judge

Dated: April 18, 2016