

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. No. 03-13-90004

IN RE: COMPLAINT OF JUDICIAL MISCONDUCT
OR DISABILITY

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

MEMORANDUM OPINION

(Filed: April 9, 2013)

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 Magistrate Judge (the “Subject Judge”). For the reasons discussed below, the complaint will be dismissed.¹

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 To the extent Complainant’s allegations concern individuals not covered by the Judicial Conduct and Disability Act, including an assistant United States attorney, the allegations will not be addressed in this opinion. See 28 U.S.C. §§ 351, 352(b)(1)(A)(i); Rule 4, Rules for Judicial-Conduct and Judicial-Disability Proceedings.

In November 2004, a criminal complaint was filed against Complainant, alleging participation in an illicit drug ring. In October 2005, Complainant pleaded guilty, and in May 2008, he was sentenced to a lengthy term of imprisonment. Through counsel, Complainant filed a motion to vacate, set aside, or correct the sentence under 28 U.S.C. § 2255 in January 2011. The presiding District Judge denied the motion, and the Court of Appeals declined to issue a certificate of appealability.

The named Subject Judge participated in Complainant's criminal case for a short period in November 2004. Specifically, he issued Complainant's arrest warrant and presided over Complainant's initial appearance in court. After the initial appearance, the Subject Judge ordered Complainant's temporary detention pending a pretrial detention hearing. A different Magistrate Judge presided over the pretrial detention hearing; the Subject Judge did not play any other role in Complainant's case.

In the instant judicial misconduct complaint, Complainant alleges the Subject Judge "conspired with the [assistant United States attorney] to intentionally and knowingly bypass federal rules of criminal procedures [sic]." Specifically, Complainant alleges that he was arrested without a warrant. At his initial appearance the next day, the prosecution applied for, and the Subject Judge granted, an allegedly "nunc pro tunc" arrest warrant, "contrary to any federal court rules or criminal statute," in order to "cover up" the warrantless arrest.

In addition, Complainant alleges that the Subject Judge wrongfully granted a "carefully and strategically crafted" continuance as a "favor" to the prosecution.

According to Complainant, the continuance allowed the prosecution time to “window-shop” for a District Judge and to “hide the state of a congested calendar in the District.”

Clearly, Complainant disagrees with the Subject Judge’s decisions to issue an arrest warrant and to grant a continuance. Disputes with the merits of decisions and rulings by a Subject Judge cannot constitute judicial misconduct. “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, Complainant previously raised these allegations as grounds for a pro se motion pursuant to 28 U.S.C. § 2244, requesting the Court of Appeals to grant him permission to file a second or successive motion to vacate, set aside, or correct his sentence under 28 U.S.C. § 2255.² The Court of Appeals denied the § 2244 motion, and Complainant cannot collaterally attack that decision in this administrative proceeding.

Because Complainant’s allegations are merits-related, they are not cognizable as 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. The allegations are therefore dismissed.

In addition to his suspicion that the Subject Judge conspired with prosecuting attorneys concerning his arrest warrant, Complainant also alleges that the Subject Judge discriminated against him because “he has no legal representation and was ignorant of the laws.” Apart from his merits-related allegations, however, Complainant offers nothing

² Complainant also raised the same allegations in a motion that is pending before the District Court.

more than his personal “belief” to support these misconduct claims. Speculation and conjecture, without more, are not sufficient to raise an inference that misconduct occurred. The record provides nothing to substantiate Complainant’s allegations of conspiracy and discrimination. Accordingly, these allegations are 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, the complaint is dismissed pursuant to 28 U.S.C. §§ 352(b)(1)(A)(i), (ii), and (iii).

/s/Theodore A. McKee
Chief Judge

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ORDER

(Filed: April 9, 2013)

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)(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 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: April 9, 2013