

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. Nos. 03-13-90006, 03-13-90010

IN RE: COMPLAINTS OF JUDICIAL MISCONDUCT
OR DISABILITY

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

MEMORANDUM OPINION

(Filed: April 10, 2013)

PRESENT: McKEE, Chief Judge.

These complaints are 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 complaints 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).

Beginning in 2006 and 2007, Complainant was a defendant in two criminal proceedings before a District Judge who is not a Subject Judge in these matters.

Complainant pleaded guilty to several of the charges and was sentenced to 65 months of imprisonment. The Court of Appeals affirmed the sentence.

In 2012, the presiding District Judge recused himself from Complainant's cases and the matter was assigned to the Subject Judge.¹ At around the same time, Complainant was arrested for violating the terms of his supervised release and was taken into custody.

Complainant began filing numerous pro se motions, including motions seeking to overturn his conviction, to suspend his sentence, to disqualify the Subject Judge, and to hold the Subject Judge in contempt. The Subject Judge denied all of the motions without prejudice to court-appointed counsel's ability to re-file them on Complainant's behalf. Counsel did not re-file the motions.

Before the hearing on whether Complainant's supervised release should be revoked, the Government moved for a competency determination. After a medical assessment and hearing, the Subject Judge determined that Complainant suffers from a mental disease rendering him unable to assist in his own defense, and therefore remanded Complainant to the custody of the Attorney General for hospitalization and treatment. To date, Complainant has not been deemed competent to proceed with the supervised release revocation hearing.

In the instant judicial misconduct complaints, Complainant provides a list of alleged wrongdoings by the Subject Judge. Among other things, Complainant alleges the

¹ The presiding District Judge recused because Complainant filed a judicial misconduct complaint against him. That complainant was dismissed as merits-related, frivolous, and lacking in evidence to raise an inference of misconduct.

Subject Judge “broke laws and openly refused to enforce” a number of statutes and constitutional provisions, and “illegally detained” him “for over 100 days.” Complainant further alleges that the Subject Judge improperly failed to recuse himself from Complainant’s cases and has a “conflict of interest because I have an open petition online seeking to have him barred and arrested.” Complainant acknowledges that he has made numerous complaints about the Subject Judge and has repeatedly demanded the Subject Judge’s arrest.

Clearly, these complaints are intended to challenge the Subject Judge’s determination to remand Complainant to custody rather than to suspend his sentence and order his release, as Complainant has repeatedly demanded. In addition, the misconduct complaints closely resemble Complainant’s pro se motions for recusal and contempt, which the Subject Judge denied.

“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 the appropriate forum to raise challenges to the merits of the Subject Judge’s decisions and rulings. Because Complainant’s allegations are merits-related, they are not cognizable as judicial misconduct. Accordingly, these 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.

Complainant offers no evidence apart from his merits-related disputes to substantiate his claims that the Subject Judge violated any laws or engaged in judicial misconduct. Moreover, Complainant bases his claim of a “conflict of interest” on a petition that Complainant chose to file. Complainant’s persistent efforts to remove the Subject Judge from the bench do not “make it illegal for him to preside over [Complainant’s] proceedings” or automatically give rise to a conflict of interest. Complainant’s allegations are frivolous and unsupported by evidence that would raise an inference that misconduct occurred, and are therefore dismissed. See 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). Because Complainant previously filed two other judicial misconduct complaints that were also dismissed as merits-related, unsupported, and frivolous, Complainant’s attention is once again directed to Rule 10(a), Rules for Judicial-Conduct and Judicial-Disability Proceedings.² Future abuse of the complaint procedure could result in the imposition of restrictions under that rule.

² 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.

/s/ Theodore A. McKee
Chief Judge

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: April 10, 2013)

PRESENT: McKEE, Chief Judge.

On the basis of the foregoing opinion entered on this date, it is ORDERED AND ADJUDGED that the written complaints brought pursuant to 28 U.S.C. § 351 are 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 of the Court of Appeals within **35 days** of the date on the letter informing the parties of the Chief Judge's order.

18(b) Form. The petition should be in letter form, addressed to the Circuit Executive 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 Office of the Circuit Executive 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 10, 2013