

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. No. 03-13-90036

IN RE: COMPLAINT OF JUDICIAL MISCONDUCT
OR DISABILITY

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

MEMORANDUM OPINION

(Filed: September 30, 2013)

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 (hereinafter “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). 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).

As a preliminary matter, Complainant makes allegations concerning his former attorney, an individual who is not subject to the Judicial Conduct and Disability Act. See 28 U.S.C. §§ 351, 352(b)(1)(A)(i); Rule 4, Rules for Judicial-Conduct and Judicial-Disability Proceedings. Accordingly, these allegations will not be addressed in this opinion.

Complainant further alleges that the Subject Judge "made knowingly false statements, misrepresented facts, misrepresented legal precedents, shortened quotations to alter their meaning, and was fundamentally dishonest in his adjudication." In addition, Complainant asserts that the Subject Judge committed judicial misconduct because he "simply lied when he said, time after time, that Petitioner had not presented evidence of the inadequacy of Counsel." In addition, Complainant alleges that the Subject Judge denied him "equal protection of the law and due process of law in basing his ruling on incorrect methods of adjudication"

Complainant's sole support for these allegations is his disagreement with the Subject Judge's denial of his motion under 28 U.S.C. § 2255. For example, Complainant alleges that the Subject Judge: (1) made the false statement that Complainant "argues that [his former attorney] should have, but failed to, object"; (2) failed to distinguish cases and

to mention an applicable case; (3) improperly applied the Strickland v. Washington standard; (4) improperly characterized an allegation as conclusory when it was supported by trial testimony; (5) characterized two claims as the same when they were “[q]uite obviously” not; and (6) “callously” disregarded the truth when he stated that Complainant failed to state why the warrant was deficient, among other things.

The foregoing allegations are plainly merits-related and are not cognizable 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 3(h)(3)(A), Rules for Judicial-Conduct and Judicial-Disability Proceedings (“[a]n allegation that calls into question the correctness of a judge’s ruling . . . without more, is merits-related”); 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).

Complainant further speculates that the Subject Judge had an “improper motive” for being so indifferent to the truth. There is no evidence to support Complainant’s allegations of misconduct and they 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. Indeed, a panel of the Third Circuit Court of Appeals denied Complainant’s request for a certificate appealability, stating “we are satisfied that no

reasonable jurist would debate the District Court's decision to deny [Complainant's] 28 U.S.C. § 2255 motion.”

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

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. No. 03-13-90036

IN RE: COMPLAINT OF JUDICIAL MISCONDUCT
OR DISABILITY

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

ORDER

(Filed: September 30, 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 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: September 30, 2013