

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. No. 03-13-90050

IN RE: COMPLAINT OF JUDICIAL MISCONDUCT
OR DISABILITY

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

MEMORANDUM OPINION

(Filed: September 27, 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 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 charged with participation in an illicit drug distribution conspiracy. After a lengthy trial in 2006, a jury found Complainant guilty. In February

2007, the Subject Judge sentenced Complainant to life in prison. Complainant appealed, and the Court of Appeals affirmed the judgment. Complainant filed a motion for a new trial, which was denied. On appeal, the Court of Appeals affirmed.

In lieu of a statement of facts in support of this complaint of judicial misconduct, Complainant provides a list of twenty pre-trial motions that the Subject Judge denied. The list includes, among others, denial of a motion for severance, a motion for access to grand jury transcripts, a motion to suppress evidence, a motion to compel evidence, and a motion for a change of venue based on pre-trial publicity. At the end of the list, Complainant concludes by stating that he is “asking that this complaint be thoroughly investigated, and that [the Subject Judge] recuse herself from any future legal matters concerning [Complainant]. By doing so, this would ensure any appearance of retaliation.”

All of these allegations reflect Complainant’s disagreement with the Subject Judge’s pre-trial decisions and rulings. They are therefore merits-related. “An allegation that calls into question the correctness of a judge’s ruling . . . is merits-related.” Rule 3(h)(3)(A), Rules for Judicial-Conduct and Judicial-Disability Proceedings. Merits-related allegations 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.

Complainant’s disputes with the Subject Judge’s pre-trial decisions and rulings should have been raised in the context of Complainant’s appeal from his criminal judgment. This administrative proceeding is not an appropriate forum for collaterally

attacking the Subject Judge's orders or the criminal judgment itself. 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 are dismissed.

To the extent Complainant is seeking the Subject Judge's recusal, such a request is inappropriately raised in this proceeding. The proper course would have been for Complainant to file a motion for recusal in the District Court. A decision on a recusal motion is merits-related and is not cognizable misconduct. See Rule 3(h)(3)(A), Rules for Judicial-Conduct and Judicial-Disability Proceedings.

Because Complainant does not present any non-merits-related allegations, this complaint is dismissed pursuant to 28 U.S.C. § 352(b)(1)(A)(ii).

_____/s/ Theodore A. McKee
Chief Judge

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ORDER

(Filed: September 27, 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)(ii).

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 27, 2013