

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. No. 03-13-90053

IN RE: COMPLAINT OF JUDICIAL MISCONDUCT
OR DISABILITY

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

MEMORANDUM OPINION

Filed: October 24, 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.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

¹ To the extent Complainant’s allegations concern individuals not covered by the Judicial Conduct and Disability Act, including one of Complainant’s court-appointed attorneys, 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.

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).

In 2001, after a jury trial, Complainant was convicted of robbery charges. The Subject Judge sentenced him to a lengthy term of imprisonment. Complainant appealed. The Court of Appeals affirmed the conviction, vacated the sentence, and remanded the matter for further proceedings. Complainant was re-sentenced in 2005, once again to a lengthy term of imprisonment.

In 2006, he filed a motion under 28 U.S.C. § 2255 to vacate, set aside, or correct the sentence. After a hearing, the Subject Judge issued a detailed memorandum opinion denying the motion. Complainant appealed and the Court of Appeals declined to issue a certificate of appealability. After a period of several years of inactivity, beginning in June 2012, Complainant has filed numerous motions seeking to revisit the merits of the § 2255 motion, requesting copies of the § 2255 hearing transcript, and seeking the Subject Judge's recusal. The Subject Judge has issued several orders denying Complainant's various motions.

This complaint of misconduct and disability is Complainant's second against the Subject Judge. See J.C. No. 03-12-90053. In the current complaint, Complainant alleges that the Subject Judge "has a disregard and a disability to consider and adhere to the federal law and the federal U.S. Constitution and the guidelines of the federal 'Bench Book for U.S. District Court Judges.'"

Specifically, Complainant alleges that the Subject Judge failed “to provide and dismiss the indictment” and failed “to recuse himself, when Rules 455(a) and § 144 required [the Subject Judge] to do so.” Complainant further alleges that the hearing on his § 2255 motion was a “farce” because the Subject Judge did not permit his court-appointed attorney additional time in which to conduct research. In addition, Complainant argues that he was wrongfully transported from one state to another without an extradition hearing, which “disregarded the law and the U.S. Constitutional rights deli[b]erately.” Finally, Complainant alleges that the Subject Judge wrongfully denied his motions requesting copies of transcripts on the basis of his race.

It is apparent that Complainant’s misconduct complaint largely reflects his disagreement with the Subject Judge’s decisions and rulings in his criminal proceeding. 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).

Indeed, Complainant previously has raised many, if not all, of the allegations in this misconduct complaint in his numerous motions relating to the Subject Judge’s recusal – including, most recently, a motion for reconsideration, 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. Because they are merits-related, these allegations are not cognizable in this proceeding. 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.

Apart from the merits-related claims, Complainant fails to substantiate his sweeping allegations of “biasness,” “racial prejudice,” and “disability.” Complainant’s only attempt at evidentiary support is an effort to compare the Subject Judge’s denial of a motion for copies of transcripts in his own criminal case to a decision by the Subject Judge in an unrelated case involving a criminal defendant of a different race, in which the Subject Judge decided to grant the defendant copies of transcripts. This is largely a merits-related disagreement. There is nothing whatsoever to sustain Complainant’s theory that these two otherwise-unrelated cases necessarily should have resulted in identical rulings, or that any differences provide plausible evidence of racial animus.

A review of the record reveals no evidence to substantiate Complainant’s claims. Accordingly, Complainant’s remaining claims are dismissed as frivolous and unsupported by evidence sufficient to 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: October 24, 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: October 24, 2013