

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. No. 03-13-90084

IN RE: COMPLAINT OF JUDICIAL MISCONDUCT
OR DISABILITY

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

MEMORANDUM OPINION

Filed: February 12, 2014

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).

In November 2012, Complainant filed a petition for a writ of habeas corpus, which was assigned to the Subject Judge. The Subject Judge referred the matter to a Magistrate

Judge, who issued a Report and Recommendation in March 2013, recommending denial of the petition. In April 2013, Complainant filed a notice of appeal. While the appeal was pending, Complainant filed numerous motions in District Court.

In August 2013, the appeal was dismissed due to lack of appellate jurisdiction. The same month, the Subject Judge issued a memorandum opinion and order adopting the Magistrate Judge's Report and Recommendation, denying the petition, and denying Complainant's other motions. Complainant filed several motions for reconsideration and other relief, and the Subject Judge denied the motions and directed that additional motions for reconsideration would not be accepted. Complainant did not appeal.

In this complaint of judicial misconduct, Complainant alleges that the Subject Judge "violated Canon 3 and 18 D-1 Article 5 thru his misbehavior by introducing evidence not in the appellate record at state level 6 years later." In addition, Complainant alleges that "[h]e has now told clerks to stop accepting my pleading[s] a clear violation of due process . . . his addition of evidence is fraud." Finally, Complainant alleges that he is "being held against my will after satisfying all sentences of record."

Many of Complainant's allegations are nothing more than attempts to challenge the decisions and rulings rendered by the Subject Judge in the habeas proceeding, including the decision to deny the habeas petition and the decision not to accept further post-judgment motions seeking reconsideration of that denial. "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. Such claims are not appropriately raised in a judicial misconduct 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). Because these allegations are merits-related, they are not cognizable in this proceeding and 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’s vague claim of fraud based on his contention that the Subject Judge “introduc[ed] evidence not in the appellate record at state level 6 yrs later,” although unintelligible, was presented in a “motion to correct the record” directed to the Subject Judge, which was denied. A challenge to that decision is therefore merits-related. 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. Moreover, to the extent Complainant is attempting to allege that the Subject Judge somehow tampered with the state court record, there is no evidence to substantiate such a claim. Accordingly, Complainant’s allegations of fraud 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.

For the foregoing reasons, the complaint is dismissed pursuant to 28 U.S.C. §§ 352(b)(1)(A)(ii) and (iii).

s/ Theodore A. McKee
Chief Judge

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ORDER

Filed: February 12, 2014

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) 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: February 12, 2014