

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. No. 03-14-90001

IN RE: COMPLAINT OF JUDICIAL MISCONDUCT
OR DISABILITY

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

MEMORANDUM OPINION

(Filed: April 3, 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).

Complainant pleaded guilty to charges relating to his participation in a scheme involving fraudulent credit cards. In 2008, the Subject Judge sentenced him to a term of

imprisonment and ordered him to pay restitution of more than \$300,000.00. Through counsel, Complainant appealed.¹ The Court of Appeals affirmed the judgment and sentence.

In March 2011, Complainant filed a motion to vacate, set aside, or correct his sentence pursuant to 28 U.S.C. § 2255. While the § 2255 motion was pending, the government filed a motion seeking “clarification” of the terms of the previously-entered restitution order. Specifically, the government moved to add a list of victims that had not been named in the Subject Judge’s original restitution order. In October 2011, the Subject Judge granted the government’s motion and amended the judgment to include the list of victims (the “amended restitution order”). The amount of restitution was unchanged from the original judgment.

Complainant appealed the amended restitution order. The Court of Appeals dismissed the appeal, concluding that Complainant lacked standing because he failed to demonstrate that he was aggrieved by the Subject Judge’s modification of the restitution order. In December 2011, the Subject Judge denied Complainant’s § 2255 motion.² Complainant then filed a motion in District Court for under Fed. R. Civ. P. 60, arguing, among other things, that the amended restitution order should be vacated and that the Subject Judge should be recused. The Subject Judge denied the motion on the grounds that it merely reflected Complainant’s dissatisfaction with the Subject Judge’s rulings.

¹ Complainant did not challenge the restitution aspect of his sentence on appeal.

² Complainant appealed the § 2255 denial and the Court of Appeals declined to issue a certificate of appealability.

Complainant appealed. The appeal is pending but has been listed for possible dismissal due to a jurisdictional defect.

In this complaint of judicial misconduct, Complainant alleges that the Subject Judge “has violated the majesty of his office of United States District Judge by conspiring with the Assistant United States Attorney . . . and [an FBI agent] to cover-up for the perjurious testimony of affidavits proffered in this case.”³ Specifically, Complainant alleges that he provided the Subject Judge “with unequivocal evidence” of perjury pertaining to the government’s motion seeking to identify numerous previously-identified victims who were due restitution. In addition, Complainant alleges that the Subject Judge “became a co-conspirator when he turned a blind eye to the facts and law” by amending the restitution order to include the government’s list of victims. Finally, Complainant contends that the Subject Judge issued the amended restitution order in the absence of jurisdiction because he “has no inherent power to issue orders of restitution.” Complainant directs my attention to his supporting exhibits and the record in the criminal proceeding in support of his claims.

Clearly, this complaint attempts to collaterally challenge the Subject Judge’s amended restitution order. The allegations are therefore merits-related. “An allegation that calls into question the correctness of a judge’s ruling, including a failure to recuse,

³ To the extent Complainant’s allegations pertain to individuals who are not covered by the Judicial Conduct and Disability Act (such as the Assistant United States attorney and the FBI agent), 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

without more, is merits-related.” Rule 3(h)(3)(A), Rules for Judicial-Conduct and Judicial-Disability Proceedings.

Indeed, Complainant already raised all of these allegations in his unsuccessful appeal of the amended restitution order. This administrative proceeding does not permit Complainant an opportunity to relitigate these same claims. 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 Complainant’s merits-related allegations are not cognizable in this administrative proceeding, they 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.

It is apparent that Complainant’s allegations of “perjury,” “conspiracy,” and a “cover-up” are based entirely upon the Subject Judge’s decision to accept the prosecution’s position over that of Complainant when the Subject Judge rendered his decision to amend the restitution order. When Complainant’s contentions are considered apart from these merits-related allegations, they are entirely unsubstantiated. Accordingly, any remaining allegations 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)(i), (ii), and (iii).

s/ Theodore A. McKee
Chief Judge

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ORDER

(Filed: April 3, 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)(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: April 3, 2014