

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. No. 03-14-90004

IN RE: COMPLAINT OF JUDICIAL MISCONDUCT
OR DISABILITY

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

MEMORANDUM OPINION

(Filed: April 14, 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 2001, after a jury trial, Complainant was convicted on charges of armed robbery. 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, Complainant filed a motion under 28 U.S.C. § 2255 to vacate, set aside, or correct the sentence. Among other things, he argued that his trial counsel was ineffective for failing to present an alibi defense.¹ After a hearing, the Subject Judge issued a memorandum opinion denying the § 2255 motion. Complainant appealed and the Court of Appeals declined to issue a certificate of appealability. In 2009, Complainant filed a motion under 28 U.S.C. § 2244, again raising claims concerning the alibi defense. The Court of Appeals denied the motion. Beginning in June 2012, Complainant began filing frequent and repetitive 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 denied Complainant's motions.

This complaint of misconduct and disability is Complainant's third against the Subject Judge. See J.C. Nos. 03-12-90053, 03-13-90053. In the current complaint, Complainant primarily alleges that, in December 2013, he obtained "newly discovered facts" concerning the Subject Judge's prior employment as a state attorney general.

Specifically, Complainant alleges that he has long suspected the Subject Judge's personal bias against him because, during Complainant's 2003 sentencing hearing, the

¹ Complainant alleges he was attending a class to obtain his barber license on the date of one of the robberies. Complainant's efforts to obtain documentation of his attendance on that date have thus far been unsuccessful.

Subject Judge allegedly discussed Complainant's history of violence. Complainant states, "[the Subject Judge] talk about my past and described how I've been vicious all my life. I don't care who I hurt if they get in my way, it doesn't matter, how I remove them, this sent an alarm within my body as to who [the Subject Judge] is. . . ." Complainant alleges that he recently discovered that, at the time of the sentencing hearing in 2003, the Subject Judge had personal knowledge of Complainant's "past prison litigation" because the Subject Judge had been a state attorney general in the early 1980's. According to Complainant, the Subject Judge's former "staff representation of the [state] and the [department of corrections] who dealt with me as a plaintiff in a number of law suits. . . ." Based upon the former staff members' representation of the state in these law suits, Complainant alleges, the Subject Judge acquired a "personal bias and actions outside of his judgeship and his knowing he had strong ill will about me."

In support, Complainant provides excerpts from legal opinions issued in the late 1970's and early 1980's.² Specifically, Complainant provides partial copies of two opinions issued in civil rights cases in 1978 and 1980, which challenged prison conditions at facilities where Complainant was imprisoned. Complainant is not mentioned in these

² The majority of the excerpted cases did not involve Complainant. It appears Complainant provided them solely to support the allegation that the Subject Judge was once a state attorney general.

opinions, but he alleges he was interviewed as a witness in both cases by individuals employed by the state attorney general's office.³

Complainant is correct in his allegation that the Subject Judge had a former career as a state attorney general. The Subject Judge served in that role for a period of two years in the early 1980's. Complainant's allegations of personal bias stemming from that prior career, however, are exceedingly implausible. Complainant's lengthy criminal history – which Complainant himself acknowledges dates back to the 1970's – was relevant to Complainant's sentencing for armed robbery in 2003 and therefore reasonably explains any of the Subject Judge's comments in that regard.⁴ In addition, Complainant's allegations of longstanding personal bias are so tenuous as to border on the absurd.

Complainant does not allege that he ever met the Subject Judge when the Subject Judge was an attorney general. Rather, Complainant relies on the fact that attorney general's office staff members interviewed Complainant as a witness. Even assuming the truth of these allegations, witness interviews conducted in the 1970's and 1980's by the Subject Judge's former staff simply does not give rise to a reasonable conclusion that the Subject Judge himself acquired a personal bias so extreme that he could not impartially preside over Complainant's sentencing more than twenty years later. Complainant's

³ Complainant also appends a 1992 opinion from a civil case in which Complainant was a plaintiff. Complainant alleges that the attorney who represented the defendants in that case in 1992 worked at the same law firm that employed the Subject Judge prior to his taking the federal bench in 1991.

⁴ A challenge to the imposition of the sentence itself would be merits-related and 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.

allegations are patently frivolous. They are therefore dismissed. 28 U.S.C.

§ 352(b)(1)(A)(iii); Rule 11(c)(1)(C), (D), Rules for Judicial-Conduct and Judicial-Disability Proceedings.

Moreover, Complainant raised these allegations in one of his many motions to recuse the Subject Judge, 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. Merits-related allegations are not cognizable as judicial misconduct. Accordingly, the allegations are subject to dismissal. 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.

In addition to the allegations of bias, Complainant’s misconduct complaint also attempts to revisit the merits of Complainant’s alibi defense, as he did in his prior complaints of judicial misconduct. Such claims repeatedly have been presented in the District Court criminal proceeding and in matters before the Court of Appeals – in, for instance, Complainant’s § 2255 motion, in the appeal of the Subject Judge’s decision denying the § 2255 motion, in Complainant’s motion under § 2244 to file a second habeas corpus petition, and in Complainant’s repeated motions to disqualify the Subject Judge. As Complainant previously has been informed, see J.C. Nos. 03-12-90053; 03-13-90053, he may not employ this administrative proceeding as an opportunity to collaterally

challenge the numerous prior judicial decisions that already have addressed his alibi defense.

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). Complainant’s allegations concerning the alibi defense are clearly merits-related. They are not cognizable in this proceeding and are therefore 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.

For the foregoing reasons, this complaint is dismissed pursuant to 28 U.S.C. §§ 352(b)(1)(A)(ii) and (iii). Because Complainant has filed three misconduct complaints in the past three years naming the same Subject Judge, all of which have been dismissed under these provisions, see J.C. Nos. 03-12-90053, 03-13-90053, and 03-14-90004, Complainant’s attention is directed to Rule 10(a), Rules for Judicial-Conduct and Judicial-Disability Proceedings.⁵ Complainant is cautioned that future abuse of the judicial

⁵ Rule 10(a), Rules for Judicial-Conduct and Judicial-Disability Proceedings, states:

Abusive Complaints. A complainant who has filed repetitive, harassing, or frivolous complaints, or has otherwise abused the complaint procedure, may be restricted from filing further complaints. After giving the complainant an opportunity to show cause in writing why his or her right to file further complaints should not be limited, a judicial council may prohibit, restrict, or impose conditions on the complainant’s use of the complaint procedure.

misconduct complaint procedure may result in the imposition of restrictions under this provision.

s/ Theodore A. McKee
Chief Judge

Upon written request of the complainant, the judicial council may revise or withdraw any prohibition, restriction, or condition previously imposed.

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ORDER

(Filed: April 14, 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: April 14, 2014