

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. No. 03-14-90016

IN RE: COMPLAINT OF JUDICIAL MISCONDUCT
OR DISABILITY

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

MEMORANDUM OPINION

(Filed: June 17, 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 Magistrate 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 has been involved in a federal criminal proceeding before the Subject Judge since late 2004. After a jury trial in 2007, the presiding District Judge sentenced

Complainant to a lengthy term of imprisonment. The Court of Appeals affirmed the conviction and sentence.

After the appeal concluded, Complainant began presenting claims that certain audio tapes had been subject to tampering at the hands of prosecutors and others. The presiding District Judge and the Subject Judge denied Complainant's repeated requests for relief relating to the audio tapes. In 2011, Complainant filed a motion to set aside, correct, or vacate the judgment under 28 U.S.C. § 2255. The motion again raised allegations concerning the allegedly altered audio tapes.

In March 2014, the Subject Judge recommended denial of the § 2255 motion and also denied a motion for a stay of the proceeding pending a decision in a concurrent mandamus proceeding.¹ Complainant objected to the Subject Judge's decisions and filed another motion for a stay. The presiding District Judge denied Complainant's stay motion, adopted the Subject Judge's report and recommendation, and denied the § 2255 motion. Complainant filed an appeal, which is pending before the Court of Appeals.

In this complaint of misconduct and disability, Complainant alleges that the Subject Judge has engaged in "unprofessional conduct," "acts mentally unfit to comprehend the serious (explicit) matter" pending before him, and "make[s] up lies to support his decision[s] against me." These allegations are based upon the Subject Judge's March 2014 orders denying a motion to stay and recommending denial of Complainant's § 2255 motion. Complainant argues that the substance of the Subject Judge's decisions

¹ Complainant has filed a number of mandamus petitions concerning the alleged tampering with audio tapes; one of them was pending at the time of Complainant's motion.

demonstrates that he does not fully appreciate Complainant's claims, including the alleged tampering with audio tapes. Complainant contends that his position is supported by "stacks of evidence" and "personal knowledge" and therefore has merit. Complainant further states that "[the Subject Judge] has read nothing . . . It's like, why did anyone even bother filing any motion to vacate, etc. or answer to it? Neither parties issues were never even addressed in a professional manner."

These allegations are plainly merits-related. "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 under the Judicial Conduct and Disability Act. See 28 U.S.C. § 352(b)(1)(A)(ii) (chief judge may dismiss a complaint if he or she finds that it is directly related to the merits of a decision or procedural ruling); Rule 11(c)(1)(B), Rules for Judicial-Conduct and Judicial-Disability Proceedings (a complaint must be dismissed in whole or in part to the extent that the chief judge concludes that the complaint is directly related to the merits of a decision or procedural ruling).

Moreover, 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 already has presented his challenges to the merits of the Subject Judge's March 2014 decisions by appealing to

the presiding District Judge, and is currently pursuing a second level of review in the Court of Appeals. This misconduct and disability proceeding does not provide Complainant yet another opportunity to relitigate all of the same claims.

Finally, the Subject Judge's March 2014 decisions are lengthy, detailed, and reflect a considerable degree of thought and effort. Complainant's disagreement with the findings and conclusions in those decisions notwithstanding, the decisions do not, on their face, provide anything whatsoever to support Complainant's accusations of dishonesty and mental unfitness. Thus, the allegations are entirely unsubstantiated. Accordingly, all remaining allegations are subject to dismissal 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). It is noted that this is Complainant's second judicial misconduct complaint naming the Subject Judge, and his third judicial misconduct complaint generally. See J.C. Nos. 07-94, 03-12-90066, 03-12-90067. All of the complaints have been dismissed as merits-related, frivolous, and unsupported under these provisions of the Act. Complainant's attention is directed to Rule 10(a), Rules for Judicial-Conduct and Judicial-Disability Proceedings.² Complainant is cautioned that

² Rule 10(a), Rules for Judicial-Conduct and Judicial-Disability Proceedings, states:

future abuse of the judicial misconduct complaint procedure may result in the imposition of restrictions under this Rule.

s/ Theodore A. McKee
Chief Judge

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. 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: June 17, 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: June 17, 2014