

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. No. 03-14-90017

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 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 has been involved in a federal criminal proceeding since 2008. After a jury trial, the presiding District Judge sentenced Complainant to a lengthy term of

imprisonment and the Court of Appeals affirmed the judgment. In 2013, after the presiding District Judge retired, the matter was assigned to the Subject Judge.¹ In March 2014, Complainant filed a motion to vacate, set aside, or correct his sentence under 28 U.S.C. § 2255, which is currently pending before the Subject Judge.

In this complaint of judicial misconduct, Complainant alleges that “on February 2, 2014, the defendant filed a motion for a[n] order to show cause to obtain a copy of the [former presiding District Judge’s] chambers file relevant to this case and specifically for the details on the ex parte conversations that [the former presiding District Judge] conducted outside the presence of the defendant with the A.U.S.A. and the F.B.I. and defendants counsels.” Complainant alleges that, upon receiving the motion, the Subject Judge “ordered his clerk of the court not to docket the motion so that no appeal may be made to the Court of Appeals.” Complainant theorizes that the Subject Judge engaged in this alleged misconduct “at the orders of [the former presiding District Judge], to cover up the misconduct of [the former presiding District Judge].”

The record directly and completely refutes Complainant’s allegations. The docket report clearly demonstrates that Complainant’s motion for an order to show cause, which he dated February 2, 2014, was received by the District Court Clerk’s Office on February

¹ Complainant attempted to file a complaint against the presiding District Judge in April 2014, long after his retirement. Complainant was informed by letter that complaints under the Judicial Conduct and Disability Act may only be filed against judges currently holding an office described in Rule 4 of the Rules for Judicial-Conduct and Judicial-Disability Proceedings, and that the complaint therefore was not accepted as to the retired District Judge. See Rule 8(c), Rules for Judicial-Conduct and Judicial-Disability Proceedings. Accordingly, any allegations concerning the retired District Judge will not be considered in this opinion.

11, 2014 and was entered on the public docket the next day. Subsequently, in April 2014, the Subject Judge issued an order denying the motion.²

There is simply no merit to Complainant's allegation that the motion was "not docketed." Accordingly, there is nothing whatsoever to substantiate Complainant's theory of a cover-up by the Subject Judge. Moreover, to the extent Complainant argues that the alleged cover-up was intended to interfere with his appeal rights, I note that Complainant filed an appeal from the order denying the motion for an order to show cause, and the appeal is currently pending.

The allegations of the complaint are patently 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. The complaint is therefore dismissed pursuant to 28 U.S.C. §§ 352(b)(1)(A)(iii).

s/ Theodore A. McKee
Chief Judge

² Any disagreement with the Subject Judge's decision to deny the motion for an order to show cause would be merits-related and therefore would not constitute cognizable judicial misconduct. 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.

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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)(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