

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

---

J.C. No. 03-14-90055

---

IN RE: COMPLAINT OF JUDICIAL MISCONDUCT  
OR DISABILITY

---

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

---

MEMORANDUM OPINION

---

Filed: December 4, 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 was a defendant in a criminal proceeding before the Subject Judge. After a lengthy trial in 1996, the jury returned a verdict of guilty on two counts and the

Subject Judge sentenced Complainant to life imprisonment. Complainant appealed and the Court of Appeals affirmed the judgment.<sup>1</sup>

In this complaint of judicial misconduct, Complainant challenges the legitimacy of his conviction. He alleges, among other things, that the indictment “lacked ‘Probable Cause’ and ‘Failed To State a RICO Claim,’” and that the Subject Judge, with “superior knowledge,” nevertheless permitted the United States Attorney to pursue the allegedly flawed indictment. Complainant further alleges that the Subject Judge improperly acquiesced when the prosecuting attorney “conduct[ed] a ‘mid-trial change in position’ now arguing the [superseding indictment] contains ‘General’ as opposed to ‘Specific’ allegations against [Complainant].” According to Complainant, the Subject Judge improperly denied Complainant’s objection to this change, arguing that “[t]he Government as well as [the Subject Judge] have superior knowledge that ‘Bait & Switch’ tactics and Hypothetical Judgments are in conflict with established laws. . . .” Finally, Complainant contends that the Subject Judge improperly sentenced him to life imprisonment despite her alleged “knowledge that the Court lacked sentencing authority.”

These allegations are merits-related. Rule 3(h)(3)(A), Rules for Judicial-Conduct and Judicial-Disability Proceedings (“An allegation that calls into question the correctness of a judge’s ruling, including a failure to recuse, without more, is merits-related.”).

Merits-related allegations do not constitute cognizable misconduct under the Judicial

---

<sup>1</sup> The matter has been assigned to several other District Judges for post-conviction proceedings; none of those judges are identified as Subject Judges in the current complaint.

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). Accordingly, such allegations are subject to dismissal.

Indeed, it is apparent that Complainant has pursued collateral challenges to his conviction in the past, including a motion in the District Court to vacate, set aside, or correct the sentence under 28 U.S.C. § 2255 and a motion in the Court of Appeals for permission to file a second or successive habeas petition. This administrative forum does not provide Complainant another avenue for challenging his conviction. 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).

In addition, Complainant alleges that the Subject Judge “engaged in conduct prejudicial to the integrity, impartiality, independence, public confidence, effective and expeditious administration of the business of the courts under 28 U.S.C. § 351(a), and Canons of Conduct For United States Judges.” Complainant further alleges that the

Subject Judge “committed fraud” and “conspire[d]” with the United States Attorney, and that she should therefore be criminally charged and removed from the bench.

It is apparent that all of these statements depend entirely on Complainant’s merits-related theory that his indictment was improper. Apart from his merits-related allegations, Complainant provides nothing whatsoever to substantiate these claims of judicial misconduct. A review of the record lends no support to Complainant’s claims. Accordingly, Complainant’s remaining non-merits-related 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).

s/ Theodore A. McKee  
\_\_\_\_\_  
Chief Judge

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

---

J.C. No. 03-14-90055

---

IN RE: COMPLAINT OF JUDICIAL MISCONDUCT  
OR DISABILITY

---

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

---

ORDER

---

Filed: December 4, 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](http://www.ca3.uscourts.gov).

s/ Theodore A. McKee  
Chief Judge

Dated: December 4, 2014