

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. No. 03-14-90068, 03-14-90079

IN RE: COMPLAINT OF JUDICIAL MISCONDUCT
OR DISABILITY

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

MEMORANDUM OPINION

Filed: November 5, 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 (“Subject Judge I”) and a United States District Judge (“Subject Judge II”). 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).

Several years ago, Complainant, through counsel, filed a petition for review of a social security decision. Subject Judge I presided. Upon the government's motion, Subject Judge remanded the matter for further agency proceedings and closed the case.

The following year, Complainant was indicted for robbery of a postal station and was taken into custody. Subject Judge II presided. Complainant was appointed counsel and entered a guilty plea. Complainant has not yet been sentenced, however, because Subject Judge II concluded that there are questions concerning Complainant's mental competence. It appears from the record that Complainant's psychiatric examination has been scheduled and is upcoming.

During the course of his criminal proceeding, Complainant has indicated that he wishes to withdraw his guilty plea, although his position in this regard appears to change. Subject Judge II has denied Complainant's motions to withdraw the plea without prejudice pending resolution of the competency issue. In addition, Complainant filed a pro se motion seeking Subject Judge II's recusal, which Subject Judge II denied. Complainant also filed a petition for a writ of mandamus seeking Subject Judge II's recusal, which the Court of Appeals denied.

Although the underlying District Court proceedings are entirely unrelated, Complainant filed this complaint of judicial misconduct naming the two Subject Judges. The focus of this Complaint is complainant's claim that, after he was taken into custody, he was involuntarily subjected to medications, including "a sedative" and "medical gas," which caused him to have an overdose and other serious health consequences.

Complainant alleges that he sent Subject Judge I “a correspondence detailing [these allegations], to know [*sic*] avail.” Complainant further alleges that he presented these claims to Subject Judge II on multiple occasions, but that Subject Judge II “conspired” with those who harmed him and acted “to conceal further, knowingly, inflicting deceitful hearing to deliberately inflict disability, knowing defendant, was not getting relief.” Complainant contends that Subject Judge II “used his official office” to “conceal[] the truth” about Complainant’s alleged mistreatment, and “was prejudice[d] and concealing, and using his official office to persuade legal process.”¹

As he acknowledges, Complainant has raised his claims of forced medication and abuse a number of times in the course of his criminal proceeding before Subject Judge II. Indeed, Subject Judge II considered the allegations and reviewed the evidence of involuntary medication presented by Complainant, including Complainant’s medical records. Subject Judge II ultimately determined that the allegations and evidence gave rise to a question concerning Complainant’s mental competence. Complainant similarly raised these claims in his unsuccessful petition for a writ of mandamus.

To the extent the allegations of this complaint of judicial misconduct are intended to challenge these prior judicial decisions and rulings, the allegations are 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-

¹ To the extent Complainant’s allegations implicate individuals not covered by the Judicial Conduct and Disability Act, such as his court-appointed attorney, prison staff, and others, 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.

Conduct and Judicial-Disability Proceedings. This proceeding is not the appropriate forum for merits-related allegations. 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).

Merits-related allegations are not cognizable misconduct 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). Complainant’s merits-related allegations are therefore subject to dismissal.

Complainant’s remaining non-merits-related allegations consist of a disjointed list of vague and conclusory claims of misbehavior, primarily on the part of Subject Judge II. Unsubstantiated accusations, such as “conspiracy,” “prejudice,” “concealing truth,” and “impeding justice,” pepper the complaint, but lack meaningful explanation or evidentiary support. The record lends no credibility to these allegations. Indeed, when Complainant filed his petition for a writ of mandamus, the Court of Appeals conducted a review of the record and concluded, among other things, that there was “nothing amiss” in the District

Court proceedings. 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)(i), (ii), and (iii).²

s/ Theodore A. McKee
Chief Judge

² Complainant raises additional allegations in a supplement to the complaint, which was not filed under penalty of perjury as required by Rule 6, Rules for Judicial-Conduct and Judicial-Disability Proceedings. Accordingly, I have considered these allegations pursuant to Rule 5, Rules for Judicial-Conduct and Judicial-Disability Proceedings. I conclude that the allegations do not provide "reasonable grounds for inquiry" into the existence of misconduct or disability as to any of the referenced Circuit Judges. Therefore, I decline to identify any complaints based on these allegations. Rule 5, Rules for Judicial-Conduct and Judicial-Disability Proceedings

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ORDER

Filed: November 5, 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: November 5, 2014