

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. No. 03-14-90092

IN RE: COMPLAINT OF JUDICIAL MISCONDUCT
OR DISABILITY

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

MEMORANDUM OPINION

Filed: January 13, 2015

PRESENT: RENDELL, Circuit Judge.¹

This is a complaint filed under the Judicial Conduct and Disability Act, 28 U.S.C. §§ 351-64, against a United States District Judge (hereinafter “Subject Judge”).

Complainant previously filed another complaint against the same Subject Judge, which was dismissed as merits-related and frivolous. J.C. No. 03-13-90074. Complainant then filed a complaint against the Circuit Judge who issued the opinion dismissing J.C. No. 03-13-90074. This subsequent complaint was likewise dismissed as merits-related and frivolous. J.C. No. 03-14-90053. For the reasons discussed below, the instant complaint will also be dismissed.²

¹ Acting pursuant to Rule 25(f), Rules for Judicial-Conduct and Judicial-Disability Proceedings.

² To the extent Complainant’s allegations concern individuals not subject to the Judicial Conduct and Disability Act, including a state court judge, the District Attorney, and a Public Defender, the allegations against them will not be addressed in this opinion. See

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).

Here, Complainant is a state prisoner who filed a petition for a writ of habeas corpus. The Subject Judge denied the petition and Complainant appealed. In a memorandum opinion, the Court of Appeals concluded that some of Complainant’s claims might be unexhausted rather than procedurally defaulted and therefore, “in an abundance of caution,” vacated the Subject Judge’s order and remanded the matter for further proceedings. Upon remand, the Subject Judge referred the habeas petition to a Magistrate Judge. The Magistrate Judge issued a Report and Recommendation recommending that the habeas petition be denied without prejudice to petitioner’s right to re-file upon completion of pending state court proceedings. Complainant subsequently filed numerous motions, including unsuccessful motions for the Subject Judge’s recusal. The Subject Judge adopted the Report and Recommendation and denied the habeas petition without prejudice. Complainant again appealed to the Third Circuit and his request for a certificate of appealability was denied. Complainant has continued to file recusal motions and petitions for “federal relief” in the District Court.

28 U.S.C. §§ 351, 352(b)(1)(A)(i); Rule 4, Rules for Judicial-Conduct and Judicial-Disability Proceedings.

As in his prior complaints of judicial misconduct, Complainant re-argues the merits of his habeas petition and alleges that he is not guilty of the crime of which he was convicted. He further expresses disagreement with the Subject Judge's denial of his habeas petition and contends that the Subject Judge's decision to deny his habeas petition is in conflict with a Supreme Court case and a list of "authorities" submitted by Complainant. Complainant also appears to contend that if the Subject Judge does not grant him habeas relief and "expunge" his conviction, then the Subject Judge has necessarily engaged in misconduct. In addition, Complainant asserts the Subject Judge should recuse himself or grant his habeas petition.

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. Such claims are not appropriately raised in a judicial misconduct proceeding. 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). Because these allegations are merits-related, they are not cognizable in this proceeding and must be 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.³

Attached to his complaint is a statement to the effect that the Subject Judge is protecting County officials by delaying his habeas petition for thirteen months and is otherwise appeasing a group of unidentified “angry and virulent” law school graduates. A claim of delay in a single proceeding may qualify as cognizable misconduct only where “the allegation concerns an improper motive in delaying a particular decision. . . .” Rule 3(h)(3)(B), Rules for Judicial-Conduct and Judicial-Disability Proceedings. Complainant provides no evidence for his claims that the Subject Judge has an improper motive for his putative delay. Moreover, the record does not reflect periods of extreme or undue delay. Indeed, Complainant has filed numerous motions which clearly have contributed to the time required to resolve the proceeding. Accordingly, Complainant’s claim of delay is dismissed as frivolous and unsupported by 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.

Finally, Complainant appears to criticize the Subject Judge’s instruction of law school students because he is “not qualified” to teach law. This allegation is dismissed as frivolous and unsupported by any evidence that would raise an inference that misconduct

³ Complainant makes additional allegations against the Magistrate Judge who issued a Report and Recommendation, as well as the Circuit Judges who considered his appeal. These judges were not named as a Subject Judges in his Complaint. Nonetheless, I have considered these allegations under Rule 5 of the Rules for Judicial-Conduct and Judicial-Disability Proceedings and conclude that these additional merits-related allegations do not warrant identification of a complaint.

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). Complainant's attention is again directed to Rule 10(a), Rules for Judicial-Conduct and Judicial-Disability Proceedings.⁴ Future abuse of the judicial misconduct complaint procedure may result in the imposition of restrictions under that rule.

s/ Marjorie O. Rendell
Circuit Judge

⁴ 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. 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: January 13, 2015

PRESENT: RENDELL, Circuit 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 Circuit Executive of the Court of Appeals within **35 days** of the date on the letter informing the parties of the Chief Judge's order.

18(b) Form. The petition should be in letter form, addressed to the Circuit Executive 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 Office of the Circuit Executive of the Court of Appeals for the Third Circuit and on the Court of Appeals’ internet site, www.ca3.uscourts.gov.

s/ Marjorie O. Rendell
Circuit Judge

Dated: January 13, 2015