

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. No. 03-14-90099

IN RE: COMPLAINT OF JUDICIAL MISCONDUCT
OR DISABILITY

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

MEMORANDUM OPINION

(Filed: March 3, 2015)

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).

Beginning in January 2013, Complainant, a state prisoner, filed ten petitions for a writ of habeas corpus. The petitions were referred to the Subject Judge, who issued a

report and recommendation shortly after each of the petitions was filed (typically within less than two weeks), recommending each time that the petition be denied. Complainant filed objections to all but the tenth of the Subject Judge's reports and recommendations. The presiding District Judge issued final orders considering Complainant's objections (in the nine cases in which objections were filed), reviewing the record *de novo*, and adopting the Subject Judge's recommendations, and denying the petitions. In each of the cases, the final decision was issued within two months or less after the petition was filed. Complainant did not file appeals from any of the presiding District Judge's orders denying the habeas petitions.¹

In this complaint of judicial misconduct, Complainant alleges that the Subject Judge "fail[ed] to intervene and recuse along with conspiracy under Title 42 Sections 1985 & 1986 constitutes 'conduct prejudicial to the effect[ive] and expeditious administration of the business of the courts.'" Specifically, Complainant alleges that the Subject Judge "habitually delayed in many unrelated cases" and that, in the most recent habeas proceeding, the Subject Judge "back dat[ed]" a report and recommendation. Complainant alleges that this purported conduct reflects "obstructing administration of justice as criminal contempt" as well as "treating litigants with extreme hostility while practicing from the bench." Finally, in a supplement to the complaint, Complainant

¹ Complainant filed one appeal from interlocutory orders issued by the Subject Judge in one of the habeas proceedings. That appeal was dismissed for lack of appellate jurisdiction.

alleges that his criminal conviction was “procured with fraud ab initio” and that his imprisonment therefore constitutes “kidnaping” and “enticement into slavery.”

These allegations largely reflect Complainant’s disagreement with the disposition of his habeas proceedings, in light of his belief that the underlying state court conviction was wrongly imposed. The allegations are therefore 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 do not constitute 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).

A claim of inappropriate delay also generally does not constitute cognizable judicial misconduct, as it effectively poses a challenge to merits of an official action by the judge – *i.e.*, the decision to assign a lower priority to a particular case. See Rule 3 Commentary, Rules for Judicial-Conduct and Judicial-Disability Proceedings. Delay may, however, qualify as cognizable judicial misconduct where “the allegation concerns . . . habitual delay in a significant number of unrelated cases.” Rule 3(h)(3)(B), Rules for Judicial-Conduct and Judicial-Disability Proceedings. Here, even accepting the dubious

proposition that Complainant's ten habeas petitions could be considered "unrelated cases" for purposes of Rule 3, there is no factual support for Complainant's allegations of habitual delay. Rather, the record demonstrates that Complainant's petitions were promptly considered. These allegations are therefore dismissed as frivolous and unsupported by evidence that would raise an inference that misconduct occurred. 28 U.S.C. § 352(b)(1)(A)(iii); Rule 11(c)(1)(C), (D), Rules for Judicial-Conduct and Judicial-Disability Proceedings.

With regard to the allegation of "back-dating," Complainant appears to be referring to the report and recommendation issued in his most recent case, which bears the date October 16, 2014 and which was entered on the District Court's docket the same day. Complainant provides a copy of the envelope in which he received the October 16 report and recommendation, which bears a stamp indicating it was placed in the mail on October 28, 2014, nearly two weeks later. Complainant's prison facility received the document the next day, October 29, 2014.

These circumstances do not reasonably support a conclusion that the Subject Judge "back-dated" the report and recommendation or otherwise engaged in any impropriety. A magistrate judge normally does not play a role in mailing court documents to litigants. There is nothing to indicate that the Subject Judge did so here. Because any apparent delay in placing the document in the mail cannot be attributed to the Subject Judge, the allegations are dismissed as frivolous and unsupported by evidence that would raise an

inference that misconduct occurred.² 28 U.S.C. § 352(b)(1)(A)(iii); Rule 11(c)(1)(C), (D), Rules for Judicial-Conduct and Judicial-Disability Proceedings. Moreover, Complainant could have raised this issue in the course of his habeas proceeding by requesting additional time in which to file objections. He did not do so; indeed, there is no indication that Complainant attempted to file objections at all.

Finally, to the extent Complainant argues that the Subject Judge improperly failed to recuse, it does not appear that Complainant filed a motion for the Subject Judge's recusal. A motion for recusal must be presented to the Subject Judge in the first instance. Moreover, a decision on a recusal motion is merits-related and is not cognizable misconduct. See Rule 3(h)(3)(A), Rules for Judicial-Conduct and Judicial-Disability Proceedings (“[a]n allegation that calls into question the correctness of a judge’s ruling, including a failure to recuse, without more, is merits-related”); see also 28 U.S.C. § 352(b)(1)(A)(ii); Rule 11(c)(1)(B), 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). Because Complainant previously filed a misconduct complaint against the presiding District Judge, which raised similar claims and which was dismissed under these provisions, see J.C. Nos. 03-14-90085, Complainant’s attention is

² To the extent Complainant’s allegations pertain to individuals who are not covered by the Judicial Conduct and Disability Act (such as District Court Clerk’s office personnel who mail court documents to litigants), 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.

directed to Rule 10(a), Rules for Judicial-Conduct and Judicial-Disability Proceedings.³

Complainant is cautioned that future abuse of the judicial misconduct complaint procedure may result in the imposition of restrictions under that rule.

s/ Theodore A. McKee
Chief Judge

³ 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: March 3, 2015)

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: March 3, 2015