

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. No. 03-14-90102

IN RE: COMPLAINT OF JUDICIAL MISCONDUCT
OR DISABILITY

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

MEMORANDUM OPINION

Filed: March 25, 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 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, a federal prisoner, filed two civil rights complaints challenging his underlying criminal conviction. The first complaint alleged ineffective assistance by his criminal defense attorney; the second challenged the validity of his plea agreement. Both

matters were assigned to the Subject Judge. The Subject Judge issued a single order concluding that the complaints both constituted successive motions under 28 U.S.C. § 2255, and that Complainant had failed to obtain the necessary permission from the Court of Appeals under 28 U.S.C. § 2244 in order to pursue them. Accordingly, he dismissed both complaints for lack of subject matter jurisdiction. Complainant filed a notice of appeal. The appeal is pending.

In this complaint of judicial misconduct, Complainant argues that the Subject Judge committed error in the decision dismissing the two civil rights complaints. Specifically, Complainant argues that the Subject Judge's conclusion that "Plaintiff's Complaints do not set forth a clear statement of jurisdiction" is "knowingly and willfully materially false, fictitious and mis-representation of material fact" because, Complainant alleges, the statements of jurisdiction in the civil rights complaints were "clear and precise." Complainant contends that the Subject Judge erroneously failed to liberally construe his pleadings and therefore violated his constitutional rights, contending that "[d]ue process required access to the court and the procedural fairness within the system." In addition, Complainant alleges that the Subject Judge violated the Code of Conduct for United States Judges by failing to act in the best interest of, and to promote public confidence in, the United States Judiciary.

This complaint does nothing more than challenge the Subject Judge's dismissal decision. As such, it is entirely merits-related. "An allegation that calls into question the

correctness of a judge’s ruling . . . without more, is merits-related.” Rule 3(h)(3)(A), Rules for Judicial-Conduct and Judicial-Disability Proceedings.

This judicial misconduct proceeding is not an appropriate forum for raising merits-related allegations. Indeed, Complainant is simultaneously pursuing an appeal of the Subject Judge’s decision in the Court of Appeals. His legal arguments should be presented in his merits appeal. 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 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). Accordingly, such allegations are dismissed.

Complainant presents nothing apart from the merits-related allegations to substantiate his claim that judicial misconduct has occurred. A review of the record reveals nothing to support such a conclusion. Accordingly, any remaining allegations are 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.

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

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ORDER

Filed: March 25, 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)(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 25, 2015