

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. No. 03-15-90001

IN RE: COMPLAINT OF JUDICIAL MISCONDUCT
OR DISABILITY

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

MEMORANDUM OPINION

Filed: April 15, 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 is a defendant in a criminal proceeding before the Subject Judge. After a hearing before a magistrate judge, Complainant was temporarily committed for

purposes of conducting a mental health evaluation, and the government sought a hearing to determine Complainant's competence to stand trial. After the evaluation was completed, the Subject Judge held a competency hearing and concluded that Complainant is competent to stand trial. Later, court-appointed counsel moved to withdraw from the representation because Complainant refused to communicate with him. After a hearing, the Subject Judge granted the motion to withdraw and appointed new counsel. Trial has not yet been scheduled.

Complainant purports to have filed this complaint of judicial misconduct as a "Living Beneficiary of the 'Estate'" and in "c/o" a trust. In it, Complainant alleges that the Subject Judge "is in default by the failure to rebut this complainant counterclaim points, on a point-by-point basis, which under your laws it is defined as: TACIT PROCURATION." Complainant further alleges that "the subject judge opted to coercively and collusively in collaboration with the Assistant U.S. Attorney and the Federal Public defendant to submit this complainant to a Mental evaluation for which this complainant . . . was forcedly [*sic*] admitted to the FEDERAL MEDICAL CENTER. . . ." 'DEPOSITORY RESOLUTION AGREEMENT' with the FEDERAL RESERVE BANKS under the INTERNATIONAL MONETARY FUND (IMF) and the PRIVATE MONEY INVESTMENT ACCOUNT (PMI), monetize all the above listed presented documents for personal monetary gains without providing the mandated relief to this complainant (this equates to extortion)." Finally, Complainant states that the

government's intent to proceed to trial "equates to threats," and he alleges that he "is being held a prisoner by force and against his will, a Hostage (Kidnapped)."

Despite Complainant's statement that this complaint of misconduct is "self-explainable," the allegations are unclear, confusing, and difficult to interpret. In large part, it appears Complainant is contesting decisions and rulings in his criminal proceeding, including his criminal indictment, his temporary commitment for purposes of conducting a mental health evaluation, and as his anticipated criminal trial.

Such 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 . . . without more, is merits-related."). 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 judicial misconduct proceeding is not an appropriate forum for raising 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). Accordingly, such allegations are dismissed.

Complainant's remaining allegations, including extortion, collusion, and kidnapping, appear to be based on mere suspicion, and are far too vague and improbable to give rise to a reasonable inference that judicial misconduct has occurred. A review of the record reveals nothing whatsoever to support such allegations. Accordingly, the remaining allegations of this complaint 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: April 15, 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: April 15, 2015