

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. No. 03-15-90008

IN RE: COMPLAINT OF JUDICIAL MISCONDUCT
OR DISABILITY

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

MEMORANDUM OPINION

(Filed: April 30, 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 was a defendant in a criminal proceeding before the Subject Judge. He pleaded guilty, was sentenced, and did not appeal. While imprisoned, he was charged

with a new crime. He pleaded guilty and was sentenced to a much lengthier term of imprisonment. Complainant appealed that sentence. The prosecution moved to enforce the appellate waiver and the Court of Appeals summarily dismissed the appeal. Years later, Complainant moved under 28 U.S.C. § 2255 to vacate, set aside, or correct the first sentence. The Subject Judge dismissed the motion with prejudice as time-barred.

In this complaint of judicial misconduct, Complainant alleges that the Subject Judge has engaged in conduct prejudicial to the effective and expeditious administration of the business of the courts by “show[ing] personal bias and prejudice against [Complainant].” Specifically, Complainant alleges that the Subject Judge “conspir[ed] with other Political members to keep [Complainant] falsely imprisoned, especially after [Complainant] has produced an Exhibit showing he [has] never seen discovery.”

Complainant states that the members of the alleged conspiracy include a governor, a mayor, an FBI agent, his ex-wife, and “numerous other political parties” who “set [him] up.” Complainant further alleges that, despite his alleged efforts to serve the opposing party, “the Court . . . state[s] [Complainant] never opposed [certain motions,] in which there is Political Corruption going on which the public needs to know about.”

Complainant contends that all of his court filings are “intervened by political parties informing these judge’s [*sic*] to dismiss [Complainant’s] pleadings regardless if [Complainant] has merits or not which is clearly a Fundamental Miscarriage of Justice.”

Complainant alleges that the Subject Judge is “withholding [his] document[s] [and]

assisting the opposing party, therefore, showing that there is an ongoing criminal and civil conspiracy against [Complainant].”

Complainant argues that the Subject Judge should be recused and criminal sanctions should be imposed because of his alleged bias and his involvement in the claimed conspiracy. In addition, on the same day he mailed this complaint of judicial misconduct, Complainant filed a motion for recusal in District Court accompanied by a purported criminal complaint against the Subject Judge and a governor. The Subject Judge denied the recusal motion.

Many of the allegations of the complaint reflect an attempt to collaterally challenge Complainant’s criminal conviction, as well as his disagreement with decisions and rulings rendered by the Subject Judge. As such, the 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, including a failure to recuse, without more, is merits-related.”). This proceeding is not an appropriate forum for raising merits-related allegations. Indeed, the allegations of the complaint were raised in the motion to recuse, which the Subject Judge denied. That decision is not subject to review here. 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, these allegations are dismissed.

Apart from his merits-related allegations, Complainant's claim that the Subject Judge is involved in a political conspiracy is both implausible and entirely unsubstantiated. In addition, although Complainant contends that the Subject Judge "intervened" in his pleadings and is "withholding . . . document[s]," the record reflects that Complainant has filed numerous motions and other documents, and that his submissions are addressed in due course by the Subject Judge. There is nothing to support the contention that Complainant's access to the court has been inhibited in any respect. Accordingly, the remaining allegations of the 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 30, 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 30, 2015