

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. Nos. 03-15-90009; 03-15-90010; 03-15-90011; 03-15-90015

IN RE: COMPLAINTS OF JUDICIAL MISCONDUCT
OR DISABILITY

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

MEMORANDUM OPINION

(Filed: September 9, 2015)

PRESENT: McKEE, Chief Judge.

These four complaints are filed under the Judicial Conduct and Disability Act, 28 U.S.C. §§ 351-64, against two United States Magistrate Judges (“Subject Judge I” and “Subject Judge II”) and two United States District Judges (“Subject Judge III” and “Subject Judge IV”). For the reasons discussed below, the complaints 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).

A grand jury returned an indictment against Complainant for racketeering-related activities. Subject Judge III presided. Subject Judge I signed the indictment and oversaw pretrial proceedings. Complainant's counsel filed a motion suppress evidence; Subject Judge IV oversaw the suppression hearing and, concluding that the search at issue violated the Fourth Amendment, granted Complainant's suppression motion.

A jury found Complainant guilty of one charge of the indictment. Shortly after trial, the matter was reassigned from Subject Judge I to Subject Judge II. After a sentencing hearing, Subject Judge III sentenced Complainant to a lengthy term of imprisonment. Complainant appealed and the Court of Appeals affirmed the judgment.

Complainant filed numerous post-judgment motions, including a motion to vacate, set aside, or correct the judgment under 28 U.S.C. § 2255 and a motion to recuse Subject Judges II and III. Subject Judge II declined to recuse and recommended denying the § 2255 motion. Subject Judge III adopted the recommendation, denied the § 2255 motion, and declined to recuse.

Complainant filed four lengthy complaints of judicial misconduct naming the four Subject Judges. In each of them, Complainant recounts in minute detail the procedural progress of his case, beginning prior to the indictment, continuing through trial, and including his numerous post-judgment motions, alleging that judicial misconduct occurred during every phase of his case. Complainant broadly alleges that the Government's case against him "results from a carefully orchestrated fiction" and that Subject Judge III is "sitting at the apex." Among many other things, Complainant repeatedly alleges that the

criminal information and grand jury indictment are invalid, that he was “‘arrested’ without a federal (or otherwise) Arrest Warrant,” that he is innocent, that his racketeering prosecution was inappropriately based upon predicate actions for which the statute of limitations had expired, that he was “kidnapped, tried for crimes the laws does not make criminal and although was acquitted not once but twice, sentence for those same crimes that are not criminal,” and that he was improperly detained prior to trial.

A large number of Complainant’s allegations concern individuals who are not federal judges. For instance, Complainant repeatedly claims that police officers and prosecuting attorneys engaged in inappropriate conduct, including a “fishing expedition” that resulted in his allegedly illegal arrest and detention. Complainant also questions the validity of the indictment and superseding indictment returned against him by the grand jury. Attorneys, police officers, and jury members are all individuals who are not covered by the Judicial Conduct and Disability Act or by the Rules for Judicial-Conduct and Judicial-Disability Proceedings. A complaint filed under the Rules “may concern the actions or capacity **only of judges**” Rule 4, Rules for Judicial-Conduct and Judicial-Disability Proceedings (emphasis added). Any allegations concerning the allegedly inappropriate behavior of non-judges will not be addressed or considered in this opinion. See 28 U.S.C. §§ 351, 352(b)(1)(A)(i); Rule 4, Rules for Judicial-Conduct and Judicial-Disability Proceedings.

The majority of the allegations of these complaints that concern the actions of the four Subject Judges are plainly 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. Complainant reiterates claims that he has repeatedly presented to the District Court and to the Court of Appeals concerning the validity of his conviction, sentence, and imprisonment. This administrative proceeding not the appropriate forum for raising such 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). 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.

Notably, Complainant filed recusal motions against Subject Judge II and Subject Judge III in which he raised many of the same allegations as these misconduct complaints, and in which he also invoked his filing of the misconduct complaints as a basis for

recusal.¹ Subject Judges II and III denied the recusal motions. Those decisions are not subject to challenge or review in this proceeding. See 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.” (emphasis added)).

Complainant further alleges that Subject Judge II unduly delayed addressing his § 2255 motion and that Subject Judges II and III both unduly delayed ruling upon a litany of other pre- and post-judgment motions. Generally, delay is not cognizable as judicial misconduct because it effectively poses a challenge to merits of official actions 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. Merits-related claims are not cognizable under the Judicial Conduct and Disability Act. 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. A claim of delay in a single case may qualify as cognizable judicial misconduct only if “the allegation concerns an improper motive in delaying a particular decision” Rule 3(h)(3)(B), Rules for Judicial-Conduct and Judicial-Disability Proceedings.

The record demonstrates that there was a period of approximately seven months from the time the § 2255 motion was referred to Subject Judge II and the report and

¹ It appears that the misconduct complaints may have been filed in a strategic but unsuccessful attempt to orchestrate the Subject Judges’ disqualification from Complainant’s case.

recommendation on it. This does not constitute a period of objectively unreasonable delay. With regard to the lengthy list of other motions that Complainant alleges remain pending before either Subject Judge II or Subject Judge III, I note that many of these motions request pre-trial relief and must, either implicitly or explicitly, have been resolved long ago. For instance, Complainant lists several motions opposing the use of certain evidence at trial, motions seeking to strike testimony, and motions seeking bail pending appeal. If these motions remain pending at all, they appear to be moot at this stage of the proceeding.

Moreover, even if Complainant could establish a period of delay in ruling upon some motions, there is no evidence of improper motive on the part of Subject Judges II and III. Complainant's practice of filing lengthy, repetitive, and frequent motions clearly contributes to any alleged delay in the progress of his case. Even a cursory review of the docket in this case, which currently contains nearly 600 entries, reflects that Complainant's numerous submissions would require a substantial amount of judicial time. Indeed, several of the allegedly pending motions seek relief identical to that presented in other motions that have been resolved. For instance, an allegedly still-pending "motion for summary judgment" appears to be redundant of the § 2255 motion. Any confusion about whether or not such duplicative motions are resolved can be attributed to Complainant. Accordingly, Complainant's allegations are subject to dismissal as frivolous and unsupported by evidence that would raise an inference that misconduct has

occurred. See 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's remaining claims concerning the four Subject Judges are unsubstantiated. Among other things, Complainant speculates that the Subject Judges, particularly Subject Judge III, subtly signaled to and communicated with the prosecution, "fabricat[ed] the record" in order to in order to achieve Complainant's conviction, and "unconscionably" enhanced Complainant's sentence. To the extent these allegations do not reiterate claims that have already been raised and considered on their merits in the criminal proceeding, they are based upon mere speculation. Thus, all of Complainant's remaining non-merits-related allegations are subject to dismissal as frivolous and unsupported by any 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.

For the foregoing reasons, these complaints are dismissed pursuant to 28 U.S.C. §§ 352(b)(1)(A)(i), (ii), and (iii).² Complainant previously filed misconduct complaints against Subject Judges I and II concerning the same criminal proceeding, which also were dismissed under these provisions. See J.C. Nos. 03-12-90062; 03-12-90063.

² Complainant raised additional allegations in a supplement to the complaint against Subject Judge III, and also provided a copy of a photograph of Subject Judge III and a police report. The supplement was not submitted under penalty of perjury. See Rule 6, Rules for Judicial-Conduct and Judicial-Disability Proceedings. I have considered the allegations and conclude they do not provide "reasonable grounds for inquiry" into the existence of misconduct. I therefore decline to identify any complaints based on these allegations. Rule 5, Rules for Judicial-Conduct and Judicial-Disability Proceedings.

Complainant's attention is therefore 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: September 9, 2015)

PRESENT: McKEE, Chief Judge.

On the basis of the foregoing opinion entered on this date, it is ORDERED AND ADJUDGED that the written complaints brought pursuant to 28 U.S.C. § 351 are 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: September 9, 2015