

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. Nos. 03-15-90012, 03-15-90013, 03-15-90024

IN RE: COMPLAINTS OF JUDICIAL MISCONDUCT
OR DISABILITY

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

MEMORANDUM OPINION

(Filed: May 27, 2015)

PRESENT: McKEE, Chief Judge.

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

I.

Complainant is a state prisoner. In 2012, he filed a petition for a writ of habeas corpus, which was assigned to Subject Judge I. Subject Judge I referred the petition to a Magistrate Judge, who recommended that the petition be denied. Subject Judge I adopted the report and recommendation and denied the petition in early 2013. Complainant appealed. The Court of Appeals concluded that some claims remained unexhausted in state court, vacated Subject Judge I's judgment, and remanded the matter for further proceedings.

Subject Judge I again referred the petition to a Magistrate Judge, who recommended that the petition be denied without prejudice to refiling upon conclusion of state court proceedings. Subject Judge I adopted the report and recommendation and denied the petition without prejudice. Complainant again appealed, and the Court of Appeals declined to issue a certificate of appealability.

Complainant then filed a "petition for federal relief," which Subject Judge I denied. Complainant appealed, and the appeal remains pending. Most recently, because Complainant had been persistently filing repetitive and frivolous motions and other documents, Subject Judge I issued an order prohibiting the filing of further complaints absent leave of the court and enjoining him from filing anything further in the closed habeas proceeding. Complainant appealed, and that appeal also remains pending.

In the complaint of judicial misconduct concerning Subject Judge I, Complainant alleges that Subject Judge I conspired with a state judge and a state district attorney "so as

to deny habeas corpus.”¹ Complaint contends that he had “already 100% proved warrant, indictment, trial and sentence are illegal,” that habeas corpus relief therefore was appropriate, and that, by denying relief, Subject Judge I improperly “shift[ed] burden of proof to me.” Complainant also takes issue with Subject Judge I’s injunction order. He argues that Subject Judge I “ha[d] no jurisdiction” to issue the order and failed to “prove assertions in [that] order.” He further contends that Subject Judge I’s conclusion that Complainant has “no viable claims” violates an order of the Court of Appeals.

Clearly, Complainant disagrees with decisions and rulings rendered by Subject Judge I in the course of the habeas proceeding – most particularly, the decisions to deny habeas relief and to impose an anti-filing injunction. All such allegations are merits-related. 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 . . . is merits-related.”). A disagreement with the merits of a judicial ruling does not give rise to cognizable misconduct. 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.

Moreover, Complainant repeatedly has presented all of these allegations in the course of his habeas corpus proceeding and his appeals. Complainant has raised similar or identical allegations in at least seven motions for Subject Judge I’s recusal, each of which was denied, and Complainant currently is pursuing at least two merits appeals. This

¹ To the extent Complainant’s allegations concern individuals who are not federal judges and therefore are not covered by the Judicial Conduct and Disability Act, 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.

administrative forum does not permit another opportunity to relitigate all of these issues. 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, Complainant’s merits-related allegations are dismissed.

Apart from his merits-related allegations, Complainant offers nothing to substantiate his claim that Subject Judge I participated in a conspiracy against him. Nothing in the record lends support to such a claim. Accordingly, Complainant’s remaining allegations concerning Subject Judge I are dismissed as frivolous and unsupported by 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.

II.

In 2014, Complainant filed a civil rights complaint, which was assigned to Subject Judge II. Subject Judge II initially denied Complainant leave to proceed *in forma pauperis* due to an insufficient motion. Complainant supplemented the motion and Subject Judge II granted it, then dismissed the complaint as frivolous and for failure to state a claim without prejudice to filing an amended complaint. Complainant filed an amended complaint and a number of motions and other documents. Subject Judge II

dismissed the amended complaint without prejudice, noting that the disjointed and voluminous nature of Complainant's filings made it difficult to ascertain the nature of the complaint and the identity of the defendants.

Complainant filed a second amended complaint along with additional motions, petitions, and other documents. Subsequently, Subject Judge II issued an order resolving fourteen of Complainant's pending motions. In it, Subject Judge II also directed Complainant to show cause why he should not be required to seek leave of court before being permitted to file additional motions.

Recently, Subject Judge II granted a motion to dismiss filed by two defendants. In that order, he noted that Complainant's "excessive and redundant filings . . . border on bad faith. . . ." and also that Complainant's answer to the show cause order was non-responsive. Subject Judge II therefore issued the injunction contemplated in the order to show cause. Complainant appealed, and that appeal remains pending.

In two separate complaints naming Subject Judge II, Complainant alleges that Subject Judge II "should have ordered the requested free copy of transcripts and the tech data from MICROSOFT HOTMAIL that I could [have] used to 100% prove innocence. . . ." Complainant contends that this discovery "could have prevented" other judges, including Subject Judge I, from "conspir[ing] to prevent acquittal, believing the brutality of prison would induce a plea bargain so that I could not sue." In addition, Complainant argues that Subject Judge II issued the dismissal orders because he was "wait[ing] to see if I will hire an attorney to redress injury," because he "attempts to extort money for bail,"

and because “he wants me to borrow money!” Complainant criticizes Subject Judge II for “act[ing] quickly to issue injunction against me for exercising 1st Amendment and for preserving my liberty interest. . . .” and for reaching conclusions that Complainant alleges are “false!” because Subject Judge II “is not a doctor or nutritionist.”

These allegations reflect Complainant’s disagreement with decisions rendered by Subject Judge II, including decisions about access to discovery materials and transcripts, orders denying IFP status and directing amendment of the complaint, and the recent order dismissing the complaint. These allegations are clearly merits related. Because such allegations do not constitute cognizable misconduct, they must be dismissed. 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.

Complainant also implies that Subject Judge II acted with an improper motive by allegedly attempting to force Complainant to hire an attorney rather than appear *pro se*. This claim appears to be based entirely upon Subject Judge II’s decisions and rulings. There is no support in the record for such allegations. Accordingly, these allegations are dismissed as frivolous and unsupported by 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.

III.

For the foregoing reasons, the complaints are dismissed pursuant to 28 U.S.C. § 352(b)(1)(A)(i), (ii), and (iii).² Complainant previously filed two judicial misconduct complaints that also were dismissed pursuant to 28 U.S.C. §§ 352(b)(1)(A)(i), (ii), and (iii). See J.C. Nos. 03-13-90074 and 03-14-90053. In the opinion resolving J.C. Nos. 03-14-90053, Complainant expressly was cautioned that continued abuse of the judicial misconduct complaint procedure could result in the imposition of restrictions on the ability to file new complaints. Complainant nonetheless filed these three new complaints, which once again are merits-related, frivolous, and unsupported by sufficient evidence.

Accordingly, a copy of this Memorandum Opinion and Order will be transmitted to the Judicial Council for consideration of whether to issue an order to show cause why Complainant should not be enjoined from filing further complaints under the Judicial Conduct and Disability Act. See Rule 10(a), Rules for Judicial-Conduct and Judicial-Disability Proceedings.

s/ Theodore A. McKee
Chief Judge

² Complainant raises additional allegations concerning the Subject Judges in supplements to that complaint, which were not submitted under penalty of perjury. See Rule 6, Rules for Judicial-Conduct and Judicial-Disability Proceedings. I have considered these allegations pursuant to Rule 5, Rules for Judicial-Conduct and Judicial-Disability Proceedings, 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.

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IN RE: COMPLAINTS OF JUDICIAL MISCONDUCT
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ORDER

(Filed: May 27, 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 Circuit Executive of the Court of Appeals within **35 days** of the date on the letter informing the parties of the Chief Judge's order.

18(b) Form. The petition should be in letter form, addressed to the Circuit Executive 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 Office of the Circuit Executive 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: May 27, 2015