

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. No. 03-15-90014

IN RE: COMPLAINT OF JUDICIAL MISCONDUCT
OR DISABILITY

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

MEMORANDUM OPINION

Filed: July 7, 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’s son was a defendant in a criminal proceeding in which he was accused of taking hostages and attempting to extort millions of dollars from a casino. After he pleaded guilty, the Subject Judge sentenced him to a lengthy term of

imprisonment. On appeal, the Court of Appeals affirmed the judgment. He filed a motion to vacate, set aside, or correct the sentence under 28 U.S.C. § 2255, which the Subject Judge denied.

In this complaint of judicial misconduct, Complainant raises two basic claims. First, she alleges that, prior to taking the bench, the Subject Judge's former career included leading a casino association in the 1980's and providing legal representation to casinos through the mid-1990's. According to Complainant, "these former associations with the gambling industry and his obvious conflict of interest" should have led the Subject Judge to recuse himself from the case. Second, Complainant states that her son suffers from mental illness, and that the Subject Judge "refused to consider [her son's] mental condition. . . ." She contends that the alleged failure to consider her son's mental condition and the decision to enhance his sentence beyond the federal sentencing guidelines resulted in a grave injustice.

I requested that the Subject Judge respond to Complainant's allegations. After review of the record and the Subject Judge's response, I address the allegations of the complaint.

Complainant's arguments concerning the length of the sentence imposed upon her son and any purported error in allegedly failing to consider his mental illness are clearly merits-related allegations. Rule 3(h)(3)(A), Rules for Judicial-Conduct and Judicial-Disability Proceedings. This administrative proceeding is not a proper forum for pursuing a collateral challenge to a criminal sentence. 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 judicial 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.

Indeed, Complainant's son, through counsel, raised a similar argument in his direct appeal, and the Court of Appeals concluded that the Subject Judge did not commit any substantive or procedural errors. Among other things, the Court specifically observed that the Subject Judge had adequately addressed the issue of whether the defendant's mental illness was a mitigating factor and had given "very careful consideration" to the mental health evidence, and that the record provided "ample evidentiary foundation" for the sentence imposed. Such findings and conclusions are not subject to challenge here. Accordingly, Complainant's allegations 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.

Similarly, Complainant's argument that the Subject Judge should have recused himself from her son's case based upon his prior work with casinos is merits-related. "An allegation that calls into question the correctness of a judge's ruling, including a failure to recuse, without more, is merits-related." Rule 3(h)(3)(A), Rules for Judicial-Conduct and

Judicial-Disability Proceedings. Moreover, her son presented this argument in a motion to vacate, set aside, or correct the sentence under 28 U.S.C. § 2255. Consistent with the Subject Judge’s response to the complaint, in the decision denying the § 2255 motion, the Subject Judge acknowledged his prior work with a casino association, but observed that the professional relationship had “long since terminated by the time the Court presided over Petitioner’s case,” and that the casino was not a party to the criminal proceeding in any event. The Subject Judge therefore concluded that recusal was not warranted.

Once again, these findings and conclusions are not subject to review in this matter, and must be dismissed as merits-related. 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. Any challenge to the Subject Judge’s decision should be raised by Complainant’s son in a properly-filed appeal from that decision.

For the foregoing reasons, the complaint is dismissed pursuant to 28 U.S.C. §§ 352(b)(1)(A)(ii).

s/ Theodore A. McKee
Chief Judge

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ORDER

Filed: July 7, 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).

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: July 7, 2015