

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. No. 03-15-90019

IN RE: COMPLAINT OF JUDICIAL MISCONDUCT
OR DISABILITY

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

MEMORANDUM OPINION

(Filed: July 16, 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. Although counsel was appointed, Complainant moved to proceed pro se. After a hearing,

the Subject Judge granted the motion and appointed a private attorney as standby counsel. Shortly before trial, Complainant entered a guilty plea. During the plea colloquy, Complainant stated that he no longer wished to proceed pro se and requested that standby counsel be appointed to act as counsel. The Subject Judge orally granted the request and then formalized the order in writing.

Shortly thereafter, the Subject Judge vacated the appointment order, stating that Complainant had advised the Court that he wished to retain the attorney privately. Later, the Subject Judge stated in a written opinion that the attorney had informed the District Court in correspondence that the decision to privately retain counsel was part of an effort to reduce Complainant's burden on the judicial system and to demonstrate his intention to cooperate, in support of a request for a lower sentence.

After a sentencing hearing, the Subject Judge sentenced Complainant to life imprisonment. Complainant filed a pro se notice of appeal. The same court-appointed attorney was appointed for purposes of the appeal. Complainant moved for new counsel. The motion was granted and the Court of Appeals appointed substitute counsel. Complainant filed a series of pro se motions in District Court, including a motion for reconsideration, which the Subject Judge denied, and a motion for the Subject Judge's recusal, which remains pending. Complainant also filed a petition for a writ of mandamus raising many of these same allegations in the Court of Appeals, which was denied. Complainant's retained counsel filed a motion to withdraw from the representation, which the Subject Judge granted.

In this complaint of judicial misconduct, Complainant presents allegations that primarily concern the court-appointed attorney who Complainant later retained privately. Complainant alleges that, during jury selection, the attorney “spoke with plaintiff’s family stating that ‘He [the attorney] could secure a lesser sentence for the plaintiff from the judge if plaintiff’s family paid him 10,000.00 dollars, and that the judge and the AUSA would see that plaintiff and plaintiff’s family was serious upon receipt.’” Allegedly relying upon these statements by counsel, Complainant’s family paid the attorney \$10,000, Complainant entered a guilty plea, and the Subject Judge sentenced Complainant to life imprisonment.

In essence, Complainant alleges that his family paid the attorney a monetary fee in response to a false promise of a sentencing outcome that the attorney could not, and did not, provide. These allegations are serious and, if true, should be raised with an appropriate bar licensing authority for further investigation. A court-appointed attorney is not covered by the Judicial Conduct and Disability Act or by the Rules for Judicial-Conduct and Judicial-Disability Proceedings, however. 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). Because the court-appointed attorney is not a judge, any allegations concerning the attorney’s allegedly unethical behavior 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.

With regard to the Subject Judge, Complainant alleges that the Subject Judge “had knowledge that [the attorney] took a payment of 10,000 dollars, and he also knew that they payment came from fraud. (See Sentencing Transcript.) [The Subject Judge] and the AUSA allowed this criminal activity to continue throughout the rest of the proceedings.” Complainant states that he is “unsure why [the Subject Judge] would be benefiting from the plaintiff’s case. (See Plea Colloquy.) The plaintiff can only come to believe that the Judge took payment from the 10,000 that was paid to [the attorney].” Complainant claims that, as a result of these events, he is “currently being held on an illegal conviction and sentence.”

To the extent that Complainant has presented these allegations in an effort to collaterally challenge the life sentence that the Subject Judge imposed, 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, including a failure to recuse, without more, is merits-related.”). This administrative proceeding is not an appropriate forum for raising merits-related allegations. Indeed, Complainant currently is pursuing a direct appeal of his sentence, and is represented by newly-appointed counsel. Challenges to the merits of the sentence should be presented in that appeal. 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, all of Complainant's merits-related allegations are dismissed.

When considered apart from his merits-related allegations, it is clear that Complainant's claims about the Subject Judge's supposed knowledge of, and participation in, Complainant's alleged illicit arrangement with counsel are entirely unsupported. Complainant's arguments notwithstanding, the record in this matter, including the transcripts of the plea colloquy and sentencing hearing, does not indicate that the Subject Judge "knew" of Complainant's alleged deal with the private attorney. To the contrary, Complainant expressly informed the Subject Judge during the plea colloquy that he was pleading guilty of his own free will and without any guarantee of what sentence he would receive. In addition, counsel provided the Subject Judge a reasonable explanation for Complainant's decision to privately retain him, as it justified the request for a lower sentence.

Because the record lends no support to Complainant's claims, these 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, the complaint is dismissed pursuant to 28 U.S.C. §§ 352(b)(1)(A)(i), (ii), and (iii).

s/ Theodore A. McKee
Chief Judge

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. No. 03-15-90019

IN RE: COMPLAINT OF JUDICIAL MISCONDUCT
OR DISABILITY

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

ORDER

(Filed: July 16, 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)(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: July 16, 2015