

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. Nos. 03-15-90098, 03-15-90099, 03-15-90100

IN RE: COMPLAINT OF JUDICIAL MISCONDUCT
OR DISABILITY

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

MEMORANDUM OPINION

(Filed: December 11, 2015)

PRESENT: McKEE, Chief Judge.

This is a complaint filed under the Judicial Conduct and Disability Act, 28 U.S.C. §§ 351-64, against three judges of the United States Court of Appeals for the Third Circuit (hereinafter “Subject Judge I,” “Subject Judge II,” and “Subject Judge III”). 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). 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).

Complainant alleges that the Subject Judges used their offices to "obtain special treatment for friends or relatives" and that the Court as a whole is an "Enterprise" made up of former prosecutors, lawyers, Common Pleas Court Judges, and Attorney Generals. Complainant also alleges the Subject Judges have accepted bribes, gifts, or other special favors and that "there is a possibility" the Subject Judges "have been influenced by others in their Court to violate" his rights. Complainant also suggests that they have taken part in a conspiracy. In addition, he contends the Subject Judges come from counties where "malicious" prosecutions have taken place and rights were violated by the use of forgeries and false trial transcripts and records. Complainant provides no factual support for these allegations. The record in Complainant's appeal that was before the Subject Judges has been reviewed and there is no evidence of judicial misconduct. Complainant's allegations are dismissed 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.

Although Complainant denies that his complaint is merits related, he states in the concluding paragraph of his complaint that he was not "duly convicted" of a crime by the

state common pleas court. To the extent Complainant seeks to collaterally attack the Subject Judges' decision regarding the application he filed pursuant to 28 U.S.C. § 2244, his allegations are dismissed as merits related. Merits related allegations are not cognizable 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 3(h)(3)(A), Rules for Judicial-Conduct and Judicial-Disability Proceedings (“[a]n allegation that calls into question the correctness of a judge’s ruling . . . without more, is merits-related”); 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).

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: December 11, 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 Circuit Executive within **42 days** after the date of the chief judge's order.

18(b) Form. The petition should be in letter form, addressed to the Circuit Executive, 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 and on the Court of Appeals’ internet site, www.ca3.uscourts.gov.

s/ Theodore A. McKee
Chief Judge

Dated: December 11, 2015