

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. No. 03-15-90104

IN RE: COMPLAINT OF JUDICIAL MISCONDUCT
OR DISABILITY

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

MEMORANDUM OPINION

(Filed: January 28, 2016)

PRESENT: McKEE, Chief Judge.

This is a complaint 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. He pleaded guilty to one count of the indictment and the Subject Judge sentenced him to a lengthy term of imprisonment. Complainant appealed the judgment but later withdrew the appeal. He then filed a motion to vacate, set aside, or correct the sentence pursuant to 28 U.S.C. § 2255. The Subject Judge dismissed the motion as barred by the terms of Complainant's plea agreement. Complainant appealed and the Court of Appeals declined to issue a certificate of appealability.

Since then, Complainant has filed numerous post-judgment motions, including motions for reconsideration and to appoint counsel, which the Subject Judge denied, and additional motions under § 2255, which the Subject dismissed as second or successive. Complainant has filed four appeals from the Subject Judge's orders. The appeals remain pending.

In this complaint of judicial misconduct, Complainant alleges that the Subject Judge abused his power when he denied Complainant's motions under 28 U.S.C. § 2255 as second or successive motions. Complainant argues that he appropriately filed three such motions within "the 1 year tolling provision which grants a petitioner 1 year from the notice of new evidence to file for relief. . ." and that the Subject Judge therefore erred in dismissing them. Next, Complainant alleges that the Subject Judge engaged in misconduct by declining to hold a hearing when Complainant's retained counsel filed a motion to withdraw from the case, and then by granting the motion to withdraw forty-five days prior to Complainant's sentencing. Complainant speculates that, in lieu of a hearing

concerning the motion to withdraw, the Subject Judge must have met with the prosecutor “off the record.” Finally, Complainant alleges that the Subject Judge “refuses to discuss my prosecutorial misconduct claims in his memorandums and opinions. . . .”

Complainant argues that he clearly established a constitutional violation, leaving “no way for the government or anyone else including a judge to refute this evidence,” but the Subject Judge “blocks all avenues for the relief I and the public deserve. . . .”

The bulk of these allegations reflect nothing more than Complainant’s disagreement with the merits of decisions and rulings rendered by the Subject Judge. As such, the 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.”). Indeed, Complainant currently is pursuing appeals that may address many of these very same legal claims. 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.

Complainant's remaining non-merits-related allegations concern his claim that the Subject Judge held an *ex parte* meeting with the prosecutor prior to granting retained counsel's motion to withdraw from the representation. Complainant offers nothing whatsoever to substantiate these allegations, however. The record reflects that retained counsel filed a written motion to withdraw based upon irreconcilable differences and lack of adequate communication with Complainant. The Subject Judge granted the motion on the papers without holding a hearing, and directed that a federal defender be appointed as substitute counsel.¹ There is nothing in the record to indicate an improper *ex parte* communication of any kind with any individual may have occurred, and Complainant's mere speculation, without more, is far from sufficient to give rise to a reasonable inference of impropriety. Accordingly, this allegation is 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.

¹ Complainant's disagreement with the Subject Judge's decision not to hold a hearing is subject to dismissal as a merits-related dispute. See 28 U.S.C. § 352(b)(1)(A)(ii); Rule 11(c)(1)(B), 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)(ii) and (iii).

s/ Theodore A. McKee
Chief Judge

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ORDER

(Filed: January 28, 2016)

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: January 28, 2016