

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. Nos. 03-15-90107, 03-15-90108, 03-15-90109

IN RE: COMPLAINT OF JUDICIAL MISCONDUCT
OR DISABILITY

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

MEMORANDUM OPINION

(Filed: March 4, 2016)

PRESENT: McKEE, Chief Judge.

This is a complaint 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”) and a United States Magistrate Judge (“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).

Complainant is a criminal defendant in a proceeding before Subject Judge I. He was appointed counsel. Subject Judge III conducted the arraignment and pretrial detention proceedings and ordered that Complainant be detained pending trial. Complainant began filing numerous pro se motions, which Subject Judge I denied without prejudice in light of Complainant's representation by counsel.

Subject Judge I ordered Complainant to undergo a competency evaluation. Although it was postponed several times, an evaluation was conducted. Subject Judge I held a competency hearing and directed the treating physician to provide a supplemental report of his findings and recommendations. No decision has yet been reached on competence. Complainant's court-appointed attorney has moved to withdraw from the representation, but Subject Judge I has deferred action on the motion pending receipt of the supplemental report on competence.

Complainant has been arraigned on a superseding indictment and continues to be detained. Trial has not yet been scheduled. In the interim, Subject Judge II presided over a confidential grand jury proceeding concerning one of Complainant's social media accounts. That matter is sealed.

In this complaint of judicial misconduct, Complainant alleges that Subject Judge I, in conspiracy with Subject Judge III and Complainant's court-appointed attorney, intentionally delayed action in Complainant's case and violated his constitutional right to a speedy trial. Complainant further alleges that Subject Judge I violated his rights "by not

supervising his law clerk properly who was allowed to rubber stamp . . . [Subject Judge I’s] name on orders issued in the case.” In addition, Complainant alleges that Subject Judge III improperly authorized a search warrant “knowing that it was bogus” and in violation of the Constitution. Finally, Complainant alleges that Subject Judge II authorized a grand jury subpoena of Complainant’s social media account, “knowing it was not authorized or requested by the Grand Jury,” in violation of Complainant’s rights, and “for the purposes of oppressive incarceration and delay!”

First, Complainant presents a number of allegations concerning the actions of his court-appointed attorney, a law clerk, prosecutors, and others. These individuals are not judges and therefore are not covered by the Judicial Conduct and Disability Act. See 28 U.S.C. §§ 351, 352(b)(1)(A)(i); Rule 4, Rules for Judicial-Conduct and Judicial-Disability Proceedings. Accordingly, any alleged actions by these individuals will not be addressed in this opinion.

Next, Complainant’s allegations concerning the authorization of search warrants and grand jury investigations clearly are intended to call into question the correctness of judicial rulings. These allegations are therefore merits-related. Rule 3(h)(3)(A), Rules for Judicial-Conduct and Judicial-Disability Proceedings. 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).

In addition, any alleged delay in scheduling Complainant's trial is a merits-related issue. See Rule 3 Commentary, Rules for Judicial-Conduct and Judicial-Disability Proceedings. Indeed, if Complainant has proper grounds for raising a claim that his constitutional right to a speedy trial has been violated, his court-appointed attorney should raise the issue in the context of his criminal proceeding. This administrative proceeding does not provide an opportunity to litigate the merits of such a legal claim. 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).

A claim of delay in a single case may qualify as cognizable judicial misconduct only if "the allegation concerns an improper motive in delaying a particular decision" Rule 3(h)(3)(B), Rules for Judicial-Conduct and Judicial-Disability Proceedings. Here, Complainant's vague suspicions of "oppressive incarceration" are far from sufficient to establish improper motive on the part of Subject Judges I, II, or III. The record offers nothing to substantiate any allegation of improper motive on the part of any of the three

Subject Judges. Thus, to the extent the claims of delay are not merits-related, they are subject to dismissal 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.

Finally, Complainant's remaining allegations are similarly vague and unsupported. For instance, Complainant does not provide any basis for his belief that Subject Judge I permits his law clerk to "rubber stamp" orders, or that Subject Judge III issued a search warrant that he knew was "bogus." Such baseless 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 against Subject Judges I, II, and III is dismissed pursuant to 28 U.S.C. §§ 352(b)(1)(A)(i), (ii), and (iii). Complainant has filed at least four prior complaints of judicial misconduct that were dismissed on these grounds. See J.C. Nos. 05-06; 05-19; 03-09-90083; 03-13-90062. Complainant's attention is therefore directed to Rule 10(a), Rules for Judicial-Conduct and Judicial-Disability Proceedings.¹ Complainant is cautioned that future abuse of the judicial misconduct complaint procedure may result in the imposition of restrictions under this provision.

¹ Rule 10(a), Rules for Judicial-Conduct and Judicial-Disability Proceedings, states:

Abusive Complaints. A complainant who has filed repetitive, harassing, or frivolous complaints, or has otherwise abused the

s/ Theodore A. McKee
Chief Judge

complaint procedure, may be restricted from filing further complaints. After giving the complainant an opportunity to show cause in writing why his or her right to file further complaints should not be limited, a judicial council may prohibit, restrict, or impose conditions on the complainant's use of the complaint procedure. Upon written request of the complainant, the judicial council may revise or withdraw any prohibition, restriction, or condition previously imposed.

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ORDER

(Filed: March 4, 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)(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 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: March 4, 2016