

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. No. 03-13-90037

IN RE: COMPLAINT OF JUDICIAL MISCONDUCT
OR DISABILITY

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

MEMORANDUM OPINION

(Filed: August 9, 2013)

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 Circuit 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 is a federal prisoner and frequent pro se litigant. In this judicial misconduct complaint, Complainant alleges that the Subject Judge “did disobey Federal

law” by failing to release him from prison based upon his claim that the trial court violated his right to a speedy trial. He states that “[the Subject Judge] openly violated [the law] as an act of bias and personal issue for this Petitioner, FOR NO LAW ALLOWS WHAT SHE DID IN REFUSAL TO DISMISS UNDER THE FEDERAL RULES.” Complainant requests that the Subject Judge be removed from the bench and “all decisions she has made in error of Federal Rules be immediately overturned.”

Complainant does not specify a particular matter before the Subject Judge or a specific decision with which he takes issue. Since 2007, Complainant has been involved in at least 25 proceedings before the Court of Appeals. The record reveals, however, that the Subject Judge authored the Court of Appeals opinion affirming the judgment and conviction in the underlying criminal matter. Among other things, she denied Complainant’s claim that he was denied a speedy trial. Since the Subject Judge issued that opinion in March 2010, Complainant has filed numerous motions in subsequent cases, attempting to re-argue the speedy trial claim and requesting that the Subject Judge be recused. The Subject Judge has denied all of Complainant’s motions.

It is apparent that this judicial misconduct complaint merely reiterates Complainant’s disagreement with the Subject Judge’s decisions, including the initial denial of his speedy trial claim and the denial of his subsequent motions to revive that claim and to recuse the Subject Judge. These allegations are all 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. Complainant’s merits-related allegations are not cognizable as judicial misconduct, and are therefore subject to dismissal. 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. This proceeding is not the appropriate forum for Complainant to present yet another attack of the merits of the Subject Judge’s decisions. 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’s allegations of personal bias rely exclusively on his disagreement with the Subject Judge’s decisions and rulings. The record provides no evidence to support a bias claim. Accordingly, to the extent they are not merits-related, Complainant’s allegations are frivolous and unsupported by evidence that would raise an inference that misconduct occurred, and are therefore dismissed. See 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)(ii) and (iii). This is Complainant’s third judicial misconduct complaint dismissed as merits-related and frivolous pursuant to 28 U.S.C. §§ 352(b)(1)(A)(ii) and (iii). See J.C. Nos. 03-09-90072, 03-11-90091. Given the merits-related and frivolous

nature of the allegations of the prior and instant complaints, Complainant's attention is directed to Rule 10(a), Rules for Judicial-Conduct and Judicial-Disability Proceedings.¹ Future abuse of the complaint procedure could result in the imposition of restrictions under that rule.

/s/ Theodore A. McKee
Chief Judge

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 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.

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. No. 03-13-90037

IN RE: COMPLAINT OF JUDICIAL MISCONDUCT
OR DISABILITY

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

ORDER

(Filed: August 9, 2013)

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 of the Court of Appeals within **35 days** of the date on the letter informing the parties of the Chief Judge's order.

18(b) Form. The petition should be in letter form, addressed to the Circuit Executive 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 Office of the Circuit Executive 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: August 9, 2013