

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. No. 03-13-90065

IN RE: COMPLAINT OF JUDICIAL MISCONDUCT
OR DISABILITY

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

MEMORANDUM OPINION

(Filed: February 11, 2014)

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 (hereinafter “Subject Judge”). In support of his complaint, Complainant filed numerous exhibits and a sworn supplement. All of the materials submitted have been reviewed and, 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).

As a preliminary matter, Complainant makes allegations concerning individuals and entities who are not subject to the Judicial Conduct and Disability Act; e.g., employees of the parole board, Department of Corrections employees, the state Attorney General, various state officials, and a District Court Clerk’s Office, among others. See 28 U.S.C. §§ 351, 352(b)(1)(A)(i); Rule 4, Rules for Judicial-Conduct and Judicial-Disability Proceedings. Accordingly, these allegations will not be addressed in this opinion.

In essence, Complainant alleges that the Subject Judge is conspiring with state officials to prevent him from bringing a complaint regarding “illegal parole operations” and the use of “hush money to deny remedy, and relief, and abuse, race discriminat[ion] against innocent offenders.” Complainant asserts that he was discriminated against and “denied the right of bringing a complaint against officials who abused and injured me, that I paid for and clearly stated in my 2254 petition.” Complainant’s primary support for these allegations is his disagreement with the Subject Judge’s rulings regarding his *pro se* petition for writ for habeas corpus. For example, Complainant complains that the Subject Judge did not order a hearing, granted respondents additional time to file a response,

denied appointment of counsel, engaged in delay, and denied a stay. These allegations are plainly merits-related and 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, including a failure to recuse, without more, is merits-related”); Rule 3(h)(3)(B), Rules for Judicial-Conduct and Judicial-Disability Proceedings (cognizable misconduct does not include an allegation about delay, unless the allegation concerns an improper motive in delaying a particular decision or habitual delay) ; 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 any event, there is no evidence to support Complainant’s allegations of conspiracy and discrimination. Accordingly, these claims 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. Notably, the Subject Judge recently dismissed Complainant’s habeas petition as moot because he has completed his maximum sentence

and his claim of being improperly denied reparole no longer presents an existing case or controversy.¹

Complainant also makes vague and speculative allegations that the Subject Judge has “secretly communicated” with respondents and tampered with records. There is no evidence to support these allegations and they are likewise dismissed as frivolous and unsupported by any evidence that would raise an inference that misconduct has occurred.

Id.

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

¹ Complainant also suggests that there may be prejudice against him in this Circuit because of a Circuit Judge’s relationship with a former state official. The Circuit Judge referenced was not named as a Subject Judge in this complaint, but I have considered these allegations pursuant to Rule 5 and decline to identify a complaint based on these frivolous and unsupported allegations of prejudice. Rule 5(a), Rules for Judicial-Conduct and Judicial-Disability Proceedings.

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ORDER

(Filed: February 11, 2014)

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 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: February 11, 2014