

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. No. 03-14-90045

IN RE: COMPLAINT OF JUDICIAL MISCONDUCT
OR DISABILITY

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

MEMORANDUM OPINION

Filed: July 16, 2014

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 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, a federal prisoner, is a frequent and repetitive pro se litigant in the District Court in which he was convicted. As a result of his numerous frivolous submissions, he is subject to an anti-filing injunction in that Court. In early 2014, in a

different District Court, Complainant filed a motion to vacate, set aside, or correct his sentence pursuant to 28 U.S.C. § 2255. The matter was assigned to the Subject Judge. The Subject Judge concluded that the § 2255 motion should have been filed in the District Court that entered Complainant's conviction and sentence, and therefore transferred the motion to that Court and closed the proceeding.

In this confusing, disjointed, and largely unintelligible complaint of misconduct, Complainant alleges that the Subject Judge "may be sentencing entrapment defense to bring out justice for the criminal injunction in response per transfer venue (maybe)." He further alleges that the Subject Judge's transfer order "is indecorate of a defensive mistake . . . to transfer to [the other District Court]."

It appears that this complaint primarily reflects Complainant's disagreement and frustration with the Subject Judge's decision to transfer his § 2255 motion to the District Court in which he is subject to an anti-filing injunction. Accordingly, the allegations are largely merits-related. "An allegation that calls into question the correctness of a judge's ruling . . . without more, is merits-related." Rule 3(h)(3)(A), Rules for Judicial-Conduct and Judicial-Disability Proceedings. 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 merits-related allegations cannot be addressed in this administrative forum. Because they are not

cognizable as judicial misconduct, they are dismissed. 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.

Complainant’s remaining allegations are incomprehensible. He refers, for instance, to a “plot,” “a discriminator,” and “investigations” involving the “Department of Human Right,” but he does not explain how these statements are intended to establish judicial misconduct on the part of the Subject Judge. A review of the record reveals absolutely no evidence of impropriety. Accordingly, any remaining allegations are 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.

For the foregoing reasons, this 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: July 16, 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)(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 clerk of the court of appeals within **35 days** of the date on the clerk's letter informing the parties of the chief judge's order.

18(b) Form. The petition should be in letter form, addressed to the clerk 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 Clerk’s Office 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: July 16, 2014