

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

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J.C. No. 03-13-90064

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IN RE: COMPLAINT OF JUDICIAL MISCONDUCT  
OR DISABILITY

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

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MEMORANDUM OPINION

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(Filed: November 21, 2013)

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”). 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).

Complainant attempted to file a civil complaint against a District Court Judge, but experienced some difficulties with Clerk's Office employees.<sup>1</sup> Specifically, Complainant was informed that a complaint of judicial misconduct should be filed pursuant to 25 U.S.C. § 351 et seq., rather than in District Court. Ultimately, however, the complaint was docketed and is currently pending in District Court.

Complainant alleges that the Subject Judge has acted negligently in his oversight of the District Court Clerk's Office. Because Complainant experienced some difficulties concerning the docketing of the civil complaint against another District Judge, she claims that the Subject Judge "is involved in the corruption to protect a judge that has been corrupt in his duty." Complainant also claims that the "District Court hasn't operated in a lawful, effective, honest, ethical way . . ." and is therefore negligent and is obstructing justice.

After reviewing the record, there is no basis for concluding that the Subject Judge acted with an improper motive. Judges generally play no role in advising Clerk's Office employees about docketing complaints and, in any event, the complaint has been

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<sup>1</sup> The complaint includes allegations of inappropriate behavior on the part of a Clerk's Office employee. This judicial misconduct proceeding is not a proper forum for considering the merits of such allegations. To the extent Complainant alleges misconduct on the part of individuals who are not covered by the Judicial Conduct and Disability Act, the allegations will not be addressed in this opinion. See 28 U.S.C. §§ 351, 352(b)(1)(A)(i); Rule 4, Rules for Judicial Conduct and Judicial-Disability Proceedings.

docketed. The allegation that Subject Judge was in any way responsible for a “cover up” of the complaint against another District Judge is frivolous and unsupported. Because there is no evidence to support Complainant’s allegations of misconduct, they 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.

Furthermore, Complainant filed two prior complaints of misconduct, which were dismissed as merits-related and unsupported by evidence that would raise an inference of misconduct. See J.C. Nos. 03-13-90047 and 03-13-90054. Accordingly, Complainant’s attention is directed to Rule 10(a), Rules for Judicial Conduct and Judicial-Disability Proceedings. Future abuse of the misconduct procedures could result in the imposition of sanctions under that rule.<sup>2</sup>

For the foregoing reasons, the complaint is dismissed pursuant to 28 U.S.C. § 352(b)(1)(A)(i) and (iii).

      /s/ Theodore A. McKee  
Chief Judge

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<sup>2</sup> Rule 10(a), Rules for Judicial conduct and Judicial Disability Proceedings, states:

(1) 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 procedures. 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

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(Filed: November 21, 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)(i) 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](http://www.ca3.uscourts.gov).

/s/ Theodore A. McKee  
Chief Judge

Dated: November 21, 2013