

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

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J.C. No. 03-14-90037

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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: June 26, 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 state prisoner, filed a pro se civil rights complaint in November 2012, which was assigned to the Subject Judge. The matter concluded in March 2013. In January 2014, Complainant filed two new documents in the closed case: an “amended

verified § 1983 complaint” and a motion for the appointment of counsel. Eight days after the two documents were filed, the Subject Judge ordered that they be removed from the docket for the closed case and be processed as a new case. The District Court clerk’s office staff opened a new case as directed. At this time, Complainant is in the process of attempting to effect service upon the defendants in that proceeding.

In this complaint of misconduct, Complainant alleges that the Subject Judge “is Accused of: 1.) Tampering with the Case Docket and Entries; 2.) Surreptitiously Terminating a Pro’ se Document . . .; and 3.) Causing Undue Obstruction and Delay in the Related Court Action.” Specifically, he takes issue with the fact that his “amended verified § 1983 complaint” was removed from the docket of his closed case and was processed as a new complaint pursuant to the Subject Judge’s order. Among other things, Complainant alleges that the removal of the complaint from the docket of the closed case was “surreptitious,” that the new complaint was not entered on the new docket until “45 days after the Subject Judge had Ordered it Removed from the Original Docket,” and that the title of the new complaint was “‘altered’ and ‘misrepresented’ as only a ‘COMPLAINT’ instead of its True Title ‘AMENDED VERIFIED §1983 COMPLAINT.’” Finally, Complainant alleges that he “has not Received Anything from the Court showing that the Subject Judge ordered the U.S. Marshal to Effect Service” in his new case.

Based upon these allegations, Complainant claims the Subject Judge has caused “Undue Obstruction and Delay” and has unnecessarily forced him to proceed pro se even

though he claims to have been “Legally Adjudicated Incompetent to Proceed Pro’se.” Complainant concludes that “The Subject Judges’ Actions in this Matter Clearly Demonstrate that She is doing Whatever is Necessary, no matter Who or What She has to Violate, to Obstruct, Delay, or Outright Sabotage the Related Court Action.”

As an initial matter, a number of Complainant’s allegations concern actions by the District Court clerk’s office staff – for instance, the allegation taking issue with the wording of the docket entry identifying Complainant’s pleading as an “amended complaint” instead of an “amended verified § 1983 complaint” – and do not implicate the Subject Judge in any way. Docket entries are created by clerk’s office staff members, who 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, such allegations will not be addressed in this opinion.

Next, several of Complainant’s allegations are entirely lacking in factual support. For instance, the record demonstrates there was no delay of “45 days” from the Subject Judge’s order until the docketing of the “amended verified §1983 complaint.” Rather, the document was processed as a new complaint within two days of the Subject Judge’s order.<sup>1</sup> Similarly, the record refutes the allegation that the Subject Judge acted

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<sup>1</sup> Shortly after the complaint was docketed, the Subject Judge closed the matter for failure to pay the filing fee. Complainant filed a motion to proceed *in forma pauperis* the following month, and the Subject Judge then granted the motion and ordered the complaint to be re-filed. The re-filing occurred at the 45-day mark to which Complainant refers. Thus, the majority of the 45-day alleged “delay” prior to re-filing is attributable to Complainant.

“surreptitiously,” as the Subject Judge’s written order appears on the public docket and expressly directs that “the Clerk of the Court shall remove [the new complaint and motion for counsel] from this case and process them as a new case.” That the clerk’s office staff adhered to the Subject Judge’s instruction is apparent, and is not “surreptitious” in any respect. Accordingly, these allegations are dismissed as patently frivolous. 28 U.S.C. § 352(b)(1)(A)(iii); Rule 11(c)(1)(C), Rules for Judicial-Conduct and Judicial-Disability Proceedings.<sup>2</sup>

Finally, Complainant disagrees with the Subject Judge’s order directing that the “amended verified § 1983 complaint” be re-docketed as a new proceeding. In addition, he contends the Subject Judge should direct the U.S. Marshal to effect service upon the defendants in his case, but has wrongly failed to do so. These allegations are 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

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<sup>2</sup> In addition, an allegation of delay in a single case generally does not constitute cognizable misconduct, and is therefore subject to dismissal for that reason as well. See Rule 3 Commentary, Rules for Judicial-Conduct and Judicial-Disability Proceedings.

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.

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

s/ Theodore A. McKee  
Chief Judge

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

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ORDER

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Filed: June 26, 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)(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](http://www.ca3.uscourts.gov).

s/ Theodore A. Mckee  
Chief Judge

Dated: June 26, 2014