

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

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J.C. Nos. 03-14-90046, 03-14-90047, 03-14-90048

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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: August 7, 2014

PRESENT: McKEE, Chief Judge.

This complaint is filed under the Judicial Conduct and Disability Act, 28 U.S.C. §§ 351-64, against three United States Circuit Judges (“Subject Judge I,” “Subject Judge II,” and “Subject Judge III”). 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 filed a pro se petition for a writ of mandamus. A panel of the Court of Appeals comprised of the three Subject Judges denied the petition. Complainant sought

both reconsideration and disqualification of the Subject Judges. The Subject Judges denied Complainant's motions. Complainant filed a petition for a writ of certiorari in the United States Supreme Court, which is pending.

In this lengthy and rambling complaint of judicial misconduct, Complainant largely reiterates the underlying grounds for his mandamus petition, including claims of human trafficking, peonage, and other wrongdoing.<sup>1</sup> Complainant argues that the mandamus petition clearly had merit and, despite his "plain English Complaint," the Subject Judges "irrationally and unreasonably perceived that it was somehow ambiguous and unclear" and the decision to deny it therefore was "shockingly in error." Complainant further alleges that the Subject Judges should have granted his recusal motion, and that their failure to recuse constitutes a violation of his constitutional right to due process. Complainant contends that the Subject Judges' decisions and rulings are so patently erroneous as to constitute "Fraud Upon the Court."

A disagreement with a judge's decision or ruling is a merits-related allegation. See Rule 3(h)(3)(A), Rules for Judicial-Conduct and Judicial-Disability Proceedings ("An allegation that calls into question the correctness of a judge's ruling . . . without more, is merits-related."). This proceeding is not the appropriate forum for challenging the merits of the Subject Judges' orders. The "misconduct procedure [under the Act] is not designed

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<sup>1</sup> To the extent Complainant's allegations concern individuals not covered by the Judicial Conduct and Disability Act, including state court judges and other individuals allegedly involved in human trafficking as set forth in Complainant's mandamus petition, 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.

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). Because merits-related allegations do not constitute cognizable judicial misconduct, Complainant's allegations are 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.

Complainant also alleges that he has been subjected to racial discrimination. Complainant states that, because he allegedly was the victim of human trafficking, "[t]he offender is White and the Petitioner is dark skin pigmented and all government officials to come in contact with the matter have been white and the offender has not been dealt with in accordance to either federal or state law." To the extent this vague claim of bias on the part of "all government officials" is intended to implicate the Subject Judges, Complainant offers nothing to support his statement apart from his basic disagreement with the merits of the Subject Judges' decisions and rulings. Accordingly, Complainant's allegations of racial discrimination and bias are subject to dismissal 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.

Finally, Complainant "raises the question as to the Visual ability of the Judges" on the grounds that the Subject Judges must have misread or could not properly see the

evidence that he put forth in support of his mandamus petition. Complainant essentially alleges that, if their decisions were not motivated by “Fraud Upon the Court,” then the only other possible explanation is a “Visual Disabilit[y]” due to “Elderly age.” Once again, this allegation is based upon nothing more than a disagreement with the merits of the Subject Judges’ decisions and rulings. It is otherwise completely unsupported. Accordingly, the claim of a visual disability on the part of the three Subject Judges is subject to dismissal 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)(i), (ii), and (iii).

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s/ Theodore A. McKee  
Chief Judge

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ORDER

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Filed: August 7, 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 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).

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s/ Theodore A. McKee  
Chief Judge

Dated: August 7, 2014