

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

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J.C. Nos. 03-14-90086, 03-14-90094

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IN RE: COMPLAINTS 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: December 22, 2014)

PRESENT: McKEE, Chief Judge.

These complaints are 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 complaints 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).

In 2007, Complainant filed a civil rights complaint in which he claimed to have been physically assaulted by prison personnel. The case was assigned to the Subject

Judge. After a lengthy procedural history, the case proceeded to a three-day jury trial at which Complainant appeared *pro se*.<sup>1</sup> In 2013, the jury returned a verdict in favor of the defendants and the Subject Judge entered judgment accordingly. Complainant appealed and the Court of Appeals affirmed the judgment.

In 2014, Complainant filed a new civil rights complaint alleging malicious prosecution with respect to a more recent arrest. The matter also was assigned to the Subject Judge. The Subject Judge granted Complainant leave to proceed *in forma pauperis*, dismissed some claims, determined that one claim should proceed, and directed that the complaint be served upon the remaining defendant. Complainant moved for a default judgment, which the Subject Judge denied as premature. The matter remains pending.

In the first complaint of judicial misconduct, Complainant alleges that, in the 2007 civil rights proceeding, the Subject Judge “wouldn’t allow” a picture of Complainant’s eye injury to be presented to the jury. He contends that this decision was “prejudice judgement [*sic*].” Complainant further alleges that the Subject Judge “committed perjury” by failing to inform the jury of the existence of the photograph, stating, “[d]uring preliminary hearing . . . [the Subject Judge] said she checked on her hands and knees nothing on file which is false. The docket list had picture of eye.”<sup>2</sup> In addition,

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<sup>1</sup> The Subject Judge had granted Complainant *pro bono* counsel but, at Complainant’s request, the representation was terminated prior to trial.

<sup>2</sup> The docket entry to which Complainant refers is a letter that he sent to the Magistrate Judge in 2009 concerning the possible existence of a photograph of his eye injury. The

Complainant alleges that the Subject Judge should not have permitted him to appear in shackles during a preliminary hearing, and that she wrongly declined to appoint him a new attorney after he discharged his first court-appointed attorney. In the second complaint of judicial misconduct, Complainant reiterates the allegations of the first misconduct complaint and goes on to allege that the Subject Judge “intercept[ed]” the 2014 civil rights complaint and “reject[ed] my 1983 out the clear blue” and “turned this into a personal vendetta.”

First, it is clear that Complaint is attempting to challenge the merits of a number of the Subject Judge’s decisions, including the decisions to have Complainant appear in court in shackles, the decision not to appoint substitute counsel, and the decision not to “allow” Complainant to present a photograph of his eye injury to the jury.<sup>3</sup> “An 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)(A), Rules for Judicial-Conduct and Judicial-Disability Proceedings. Merits-related allegations do not constitute cognizable misconduct. 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.

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photograph itself was not appended to the letter and does not appear elsewhere in the record.

<sup>3</sup> It does not appear from the record that the Subject Judge ordered a photograph to be excluded from consideration by the jury. Rather, it appears that no photograph was ever offered into evidence and the jury therefore was unable to consider a photograph. Nonetheless, to the extent Complainant claims that the Subject Judge reached an incorrect decision with regard to the presentation of evidence to the jury, the allegation is merits-related.

Indeed, Complainant unsuccessfully raised allegations concerning his efforts to present the photograph to the jury in the course of his appeal. This administrative proceeding does not permit Complainant an opportunity to relitigate this claim. 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). Accordingly, Complainant’s merits-related claims are subject to dismissal.

Complainant’s remaining contentions are unsubstantiated and do not give rise to a reasonable inference that misconduct has occurred. Complainant’s claim that the Subject Judge “committed perjury” is premised exclusively upon his disagreement with the alleged statement by the Subject Judge during a preliminary hearing to the effect that she looked for the photograph of Complainant’s eye injury and was unable to find it. While Complainant clearly disagrees with the statement, he offers nothing to support his belief that the Subject Judge made an intentional misrepresentation. As previously noted, the photograph is not evident in the record and Complainant’s single letter to the Magistrate Judge in 2009 discussing its possible existence does not lend support to a perjury claim.

Complainant’s claim of a “personal vendetta” concerning his 2014 civil rights complaint is undermined by the record. Contrary to his statement that the Subject Judge

“reject[ed]” his complaint “out [of] the clear blue,” it is apparent the complaint remains pending.<sup>4</sup> Complainant offers no evidence of a “personal vendetta,” and nothing inappropriate appears in the record. Accordingly, the remaining allegations 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.

For the foregoing reasons, the complaints are dismissed pursuant to 28 U.S.C. §§ 352(b)(1)(A)(ii) and (iii).

s/ Theodore A. McKee  
Chief Judge

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<sup>4</sup> Moreover, to the extent this claim reflects his disagreement with the Subject Judge’s decision to dismiss a portion of the complaint, the allegation is merits-related and therefore is not cognizable. 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.

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ORDER

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(Filed: December 22, 2014)

PRESENT: McKEE, Chief Judge.

On the basis of the foregoing opinion entered on this date, it is ORDERED AND ADJUDGED that the written complaints brought pursuant to 28 U.S.C. § 351 are 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](http://www.ca3.uscourts.gov).

s/ Theodore A. McKee  
Chief Judge

Dated: December 22, 2014