

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

---

J.C. No. 03-15-90063

---

IN RE: COMPLAINT OF JUDICIAL MISCONDUCT  
OR DISABILITY

---

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

---

MEMORANDUM OPINION

---

(Filed: August 25, 2015)

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 inmate, filed a motion seeking to have funds from his inmate account released to him. The government responded that certain funds in the account should be released for payment in restitution in Complainant’s criminal cases. In

April 2015, the Subject Judge issued an order directing that the undisputed funds be released to Complainant and ordering Complainant to respond to the Government's motion concerning the restitution payment. Complainant then filed a "motion that the Court's order is void," which appears to seek reconsideration of the Subject Judge's order and argues that Complainant already had responded to the issues raised in the Government's motion. The Subject Judge has not yet ruled on Complainant's "motion to void" or on the Government's motion concerning restitution payment.

In this complaint of judicial misconduct, Complainant reiterates the substance of his "motion to void," alleging that the Subject Judge's order "stands as a violation of defendant's due process" because "the judge intentionally disregarded all filed motions by defendant . . . in an attempt to dismiss this litigation. . . ." Complainant speculates that the "motion to void" will be unsuccessful and that "the conduct of this judge against defendant will continue. In other words, the judge will disregard defendant's motion to void said order and dismiss the case. . . ."

This complaint is entirely merits-related. "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. Complainant is challenging the Subject Judge's April 2015 decision about the release of funds, and is attempting to relitigate his "motion to void," which is pending before the

Subject Judge.<sup>1</sup> 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).

Merits-related allegations do not constitute cognizable misconduct under the Judicial Conduct and Disability Act. See 28 U.S.C. § 352(b)(1)(A)(ii) (chief judge may dismiss a complaint if he or she finds that it is directly related to the merits of a decision or procedural ruling); Rule 11(c)(1)(B), Rules for Judicial-Conduct and Judicial-Disability Proceedings (a complaint must be dismissed in whole or in part to the extent that the chief judge concludes that the complaint is directly related to the merits of a decision or procedural ruling). Accordingly, Complainant’s allegations are dismissed.

It does not appear that Complainant has presented any non-merits-related allegations. The record reveals nothing to substantiate a claim of judicial misconduct.

---

<sup>1</sup> To the extent Complainant speculates about future conduct by attempting to predict how the Subject Judge will rule on his “motion to void,” such allegations are entirely hypothetical in nature. It is axiomatic that misconduct requires actual conduct of some kind. See Rule 3(g), Rules for Judicial-Conduct and Judicial-Disability Proceedings (defining misconduct). Conjecture about the possibility of future conduct, without more, is far from sufficient to raise an inference that misconduct has occurred and is therefore subject to dismissal 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. Moreover, a dispute with the decision that the Subject Judge ultimately renders would be merits-related and not cognizable as misconduct. 28 U.S.C. § 352(b)(1)(A)(ii); Rule 11(c)(1)(B), Rules for Judicial-Conduct and Judicial-Disability Proceedings.

Accordingly, any non-merits-related 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, the complaint is dismissed pursuant to 28 U.S.C. §§ 352(b)(1)(A)(ii) and (iii).

s/ Theodore A. McKee  
\_\_\_\_\_  
Chief Judge

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

---

J.C. No. 03-15-90063

---

IN RE: COMPLAINT OF JUDICIAL MISCONDUCT  
OR DISABILITY

---

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

---

ORDER

---

(Filed: August 25, 2015)

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](http://www.ca3.uscourts.gov).

s/ Theodore A. McKee  
Chief Judge

Dated: August 25, 2015