

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

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J.C. No. 03-15-90088

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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 9, 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).

In July 2015, Complainant filed a pro se civil complaint against a bank and other entities, claiming violations of the Truth in Lending Act and seeking to prevent a property

foreclosure. Within a month of filing the complaint, Complainant filed four separate motions seeking preliminary relief. The Subject Judge denied the motions for failure to demonstrate a likelihood of success on the merits. In the most recent order denying two such motions, the Subject Judge ordered Complainant to discontinue filing applications for preliminary relief without leave of court. The Subject Judge stated that Complainant failed to provide a basis for his repeated requests for extraordinary relief, and the case therefore “will proceed in the normal course.” The defendants have filed a motion to dismiss the complaint, which remains pending.

In this complaint of judicial misconduct, Complainant alleges that the defendants have “a statutory duty to disgorge funds received, return the negotiable instrument marked cancelled, file a satisfaction or release at the county . . . or file a case within twenty days. CONGRESS WAS VERY SPECIFIC!” Complainant further alleges that, because the defendants have not complied with these purported requirements, “OBVIOUSLY MALFEASANCE, CONSPIRACY AND RACKETEERING IS INVOLVED.” As an exhibit to the complaint of misconduct, Complainant appended a “petition for a writ of mandamus” directed to the United States Supreme Court, which elaborates upon his allegations. It is unclear whether the document was filed in the Supreme Court.

It appears that the entirety of this complaint of judicial misconduct is concerned with Complainant’s belief that his civil case has merit and that he should prevail on his claims for relief. All such allegations are merits-related. 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, including a failure to recuse, without more, is merits-related." Merits-related allegations do not constitute cognizable judicial 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.

Complainant's case remains pending before the Subject Judge, who has made clear that Complainant's claims for relief will be considered in due course. This administrative proceeding does not provide an alternative avenue for Complainant to continue his pursuit of extraordinary preliminary relief. 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 allegations 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.

The complaint does not meaningfully articulate any non-merits-related allegation of inappropriate conduct on the part of the Subject Judge. To the extent Complainant's vague reference to "malfeasance, conspiracy and racketeering" is intended to allege judicial misconduct, a review of the record reveals nothing to substantiate these serious claims. Because they are entirely unsubstantiated, Complainant's 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

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ORDER

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(Filed: November 9, 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 **42 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: November 9, 2015