

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

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J.C. Nos. 03-16-90005, 03-16-90006, 03-16-90007

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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: February 25, 2016)

PRESENT: McKEE, Chief Judge.

This is a complaint filed under the Judicial Conduct and Disability Act, 28 U.S.C. §§ 351-64, against three judges of the United States Court of Appeals (hereinafter “Subject Judge I,” “Subject Judge II,” and “Subject Judge III”). For the reasons discussed below, the complaint will be dismissed.<sup>1</sup>

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

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<sup>1</sup> Complainant also makes allegations concerning individuals and/or entities not subject to the Judicial Conduct and Disability Act; e.g., state officials, the National Security Agency, and a local company. See 28 U.S.C. §§ 351, 352(b)(1)(A)(i); Rule 4, Rules for Judicial-Conduct and Judicial-Disability Proceedings. Accordingly, these allegations will not be addressed in this opinion.

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). 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).

By way of background, Complainant, who is not an attorney, sought to participate as *amicus curiae* in another person’s District Court action seeking habeas relief. The District Court denied Complainant’s *pro se* motion for summary judgment and other motions as frivolous and the District Court Clerk was directed not to accept any more filings from Complainant without court approval. The District Court observed that Complainant had nothing to do with the individual seeking habeas relief or her case. Complainant filed a notice of appeal of the order denying his motions. Subject Judges I, II, and III sat on the panel assigned to Complainant’s appeal.

Complainant alleges that the Subject Judges engaged in judicial misconduct in the course of his appeal because they violated his “civil rights and fair access to the law” and denied another individual’s petition for habeas corpus relief. Complainant’s sole support for these allegations is his disagreement with the Subject Judges’ decisions in the course of his appeal; e.g., the granting of Complainant’s own motion to withdraw the appeal and a subsequent decision denying Complainant’s motion to reinstate the appeal. Complainant

also complains that his motion to recuse Subject Judge I was dismissed as “moot due to [an] order granting [his] motion to withdraw.”<sup>2</sup> These allegations are plainly merits-related and are not cognizable 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 3(h)(3)(A), Rules for Judicial-Conduct and Judicial-Disability Proceedings (“[a]n allegation that calls into question the correctness of a judge’s ruling, including a failure to recuse, without more, is merits-related”); 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).

In any event, there is no evidence to support Complainant’s allegations of misconduct and they 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 complaint is dismissed pursuant to 28 U.S.C. § 352(b)(1)(A)(i), (ii), and (iii).

s/ Theodore A. McKee  
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Chief Judge

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<sup>2</sup> The Third Circuit Clerk’s Office issued an order stating that no action would be taken on the recusal motion in light of the Court’s order denying the motion to reinstate the appeal. Complainant filed a second appeal, but this appeal was dismissed for failure to pay the requisite filing fee.

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ORDER

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(Filed: February 25, 2016)

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 Circuit Executive within **42 days** after the date of the chief judge's order.

18(b) Form. The petition should be in letter form, addressed to the Circuit Executive, 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 Office of the Circuit Executive and on the Court of Appeals’ internet site, [www.ca3.uscourts.gov](http://www.ca3.uscourts.gov).

s/ Theodore A. McKee  
Chief Judge

Dated: February 25, 2016