

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

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J.C. No. 03-16-90037

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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 8, 2016)

PRESENT: McKEE, Chief Judge.

This is a complaint 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 state prisoner, filed two pro se proceedings in 2015: a petition for a writ of habeas corpus challenging his state court conviction and a civil rights complaint

against state legislators and attorneys and others, claiming, among other things, that the statute under which he was convicted is unconstitutional. Both matters were assigned to the Subject Judge.

In early 2016, the Subject Judge issued a memorandum opinion dismissing the civil rights complaint as legally frivolous. Among other things, the Subject Judge concluded that some of the claims should have been raised in a petition for a writ of habeas corpus rather than in a civil rights proceeding and that the claims against the state's attorneys and legislators were barred due to legislative and prosecutorial immunity. Complainant appealed the judgment but the appeal was later dismissed for failure to pay the filing fee.

The petition for a writ of habeas corpus is fully briefed and remains pending. Most recently, Complainant filed a motion for a preliminary injunction seeking emergency medical intervention for his health concerns. The Subject Judge denied the motion on the grounds that such relief is not available in a habeas corpus proceeding.

In this complaint of judicial misconduct, Complainant alleges that the Subject Judge erred in resolving his civil right complaint prior to his habeas corpus petition, "knowing that the civil proceeding was interdepend [*sic*] upon the disposition of the W[rit] of H[abeas] C[orpus] petition." Complainant alleges that the judgment violated Complainant's constitutional rights and created a "false prompt" to appeal. According to Complainant, the "premature disposition of Ptr's [*sic*] civil petition has in effect provided aid and bias favoring the defendant. . . ." In addition, Complainant argues that the Subject

Judge's dismissal based on immunity "exhibits deliberate indifference and bias toward ptr [sic]. . . ." and "is misguided and raises serious questions as to ethics and equal justice."

It is clear that Complainant's allegations reflect his disagreement with the Subject Judge's order dismissing his civil rights complaint. Such allegations are 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. Merits-related allegations are beyond the scope of a judicial misconduct proceeding. Although Complainant could have challenged the judgment in the course of the appeal he filed, Complainant opted not to prosecute that appeal, and 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). Because the allegations do not constitute cognizable misconduct, they 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.

Complainant's allegations of bias and deliberate indifference are premised solely upon his dispute with the merits of the Subject Judge's decision and are otherwise entirely unsubstantiated. The record provides no support for these allegations. Accordingly, Complainant's remaining allegations 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.

Based on the foregoing, 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: August 8, 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)(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: August 8, 2016