

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

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J.C. No. 03-13-90078

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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: December 12, 2013

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, with several relatives, filed a pro se civil rights complaint in state court, raising constitutional claims stemming from Complainant’s son’s allegedly

wrongful arrest. The matter was removed to District Court and, after several months before a different presiding District Judge, was assigned to the Subject Judge.

Recently, the Subject Judge issued an order denying several of plaintiffs' outstanding motions, including a motion for the appointment of counsel. He also directed the plaintiffs to respond to a pending motion to dismiss or file an amended complaint. The plaintiffs have not yet complied with the Subject Judge's order. Complainant's case remains pending at this time.

The majority of the instant judicial misconduct complaint describes Complainant's claims in the pending civil rights action, and makes little mention of the Subject Judge specifically. With regard to the Subject Judge, Complainant alleges only that "[s]ince the filing of the Civil Complaint and Notice of Removal, over 120 days have passed; there has been no response or Orders from the Honorable [Subject Judge]." She further states that "[w]e are now inquiring as to why there is such a delay in serving justice and issuing correction to all who have violated our Sec. 1983 rights." Finally, after a lengthy discussion of the merits of the claims raised in that matter, Complainant concludes by stating broadly: "Is it not time for [the Subject Judge] to make some kind of determination by use of his *entrusted* powers, oath and ethics by way of Canon Rules (*dispose of court business promptly*), The Whistle Blower Act and expose the corruption and provide protection to the Plaintiffs per the Whistle Blower Act? Has he done this and is it a matter of time before it resolves? Are not the Plaintiffs all victims of numerous crimes?"

While not a model of clarity, it appears that Complainant is essentially alleging misconduct because she believes she should prevail in her civil rights action, and the Subject Judge has not yet rendered a favorable decision on the merits of the case. Generally, delay in a single case is not cognizable as judicial misconduct, as it effectively poses a challenge to merits of an official action by the judge – *i.e.*, the decision to assign a lower priority to the case. See Rule 3 Commentary, Rules for Judicial-Conduct and Judicial-Disability Proceedings. Merits-related claims are not cognizable under the Judicial Conduct and Disability Act. 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.

A claim of delay in a single proceeding may, however, qualify as cognizable judicial misconduct where “the allegation concerns an improper motive in delaying a particular decision. . . .” Rule 3(h)(3)(B), Rules for Judicial-Conduct and Judicial-Disability Proceedings. Complainant does not allege improper motive on the part of the Subject Judge. The Subject Judge issued two orders resolving several pending motions shortly before this misconduct complaint was filed<sup>1</sup> and, among other things, directed the plaintiffs to file a response. The plaintiffs have not yet complied with the Subject Judge’s instruction. In light of their failure to act, some of the complained-of delay must be attributed to the plaintiffs themselves.

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<sup>1</sup> The orders were entered on the District Court’s docket three days after the Subject Judge issued them. Complainant likely received copies of the orders shortly after she filed this misconduct complaint.

Moreover, as a factual matter, the record does not support a claim of objectively unreasonable delay in the District Court proceeding. The matter has been before the Subject Judge for a relatively short period and, during that time, both parties have submitted numerous motions and responses for the Subject Judge's consideration. Complainant's allegations of undue delay are frivolous and unsupported by evidence that would raise an inference that misconduct occurred. 28 U.S.C. § 352(b)(1)(A)(iii); Rule 11(c)(1)(C), (D), Rules for Judicial-Conduct and Judicial-Disability Proceedings. They are therefore dismissed.

For the foregoing reasons, the complaint is dismissed pursuant to 28 U.S.C. §§ 352(b)(1)(A)(ii) and (iii). Because Complainant has filed three misconduct complaints that have been dismissed under these provisions, see J.C. Nos. 03-13-90007, 03-13-90078, 03-13-90079, Complainant's attention is directed to Rule 10(a), Rules for Judicial-Conduct and Judicial-Disability Proceedings.<sup>2</sup> Complainant is cautioned that future abuse

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<sup>2</sup> Rule 10(a), Rules for Judicial-Conduct and Judicial-Disability Proceedings, states:

Abusive Complaints. A complainant who has filed repetitive, harassing, or frivolous complaints, or has otherwise abused the complaint procedure, may be restricted from filing further complaints. After giving the complainant an opportunity to show cause in writing why his or her right to file further complaints should not be limited, a judicial council may prohibit, restrict, or impose conditions on the complainant's use of the complaint procedure. Upon written request of the complainant, the judicial council may revise or withdraw any prohibition, restriction, or condition previously imposed.

of the judicial misconduct complaint procedure may result in the imposition of restrictions under that rule.

/s/ Theodore A. McKee  
Chief Judge

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ORDER

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Filed: December 12, 2013

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: December 12, 2013