

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

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J.C. Nos. 03-14-90056, 03-14-90078

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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: February 24, 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”).<sup>1</sup> 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).

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<sup>1</sup> Complainant filed the complaint with this Court, and filed a second copy with the Department of Justice Office of the Inspector General. The OIG then forwarded the complaint to this Court at a later date. Upon receipt, each document was assigned a separate case number. Thus, two case numbers were assigned in error.

Complainant was a defendant in a criminal proceeding before the Subject Judge. After a seven-day trial, the jury returned a verdict of guilty on twenty-one counts, including securities fraud, mail fraud, bank fraud, wire fraud, and other crimes. The Subject Judge sentenced Complainant to a lengthy term of imprisonment and payment of a substantial amount of restitution. Complainant appealed. Complainant moved in the District Court for release pending appeal, which was denied. Complainant appealed that decision as well. Complainant is represented by counsel in both appeals, which remain pending.

Shortly prior to the sentencing hearing, Complainant filed this lengthy complaint of judicial misconduct and disability, accompanied by over 160 pages of exhibits. In it, Complainant alleges “a medical condition of [the Subject Judge]” that caused her “physical and mental ability” to be “not up standard to endure the grueling demands of a trial” and “may have had a part in the handling of the trial.” Complainant goes on to allege numerous instances in which the Subject Judge allegedly demonstrated a disability and engaged in judicial misconduct in the course of Complainant’s criminal proceeding.<sup>2</sup>

Among other things, Complainant identifies an order in which the Subject Judge denied a motion for a continuance in which she “accused” Complainant of engaging in

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<sup>2</sup> Complainant also raises numerous allegations concerning individuals who are not judges, and are therefore not covered by the Judicial Conduct and Disability Act. See Rule 4, Rules for Judicial-Conduct and Judicial-Disability Proceedings. For instance, Complainant alleges “collusion” and a “conflict of interest” between an FBI agent and a witness, “perjury” by another witness, and “legal misrepresentation” by an attorney. This judicial misconduct proceeding is not a proper forum for considering the merits of such allegations. Accordingly, such allegations will not be addressed in this opinion. See 28 U.S.C. §§ 351, 352(b)(1)(A)(i).

“feet-dragging tactics” and that his own actions caused him any prejudice he suffered as a result. In addition, Complainant contends that the Subject Judge wrongly determined the amount of loss to the victims of his crimes, by allegedly basing the loss decision upon opposing counsel’s “one line objection.” Complainant argues that, “either through misconduct or disability,” the Subject Judge failed to include certain information in her loss report. According to Complainant, the Subject Judge “show[s] true inability to understand and lend strong credibility to a disability claim” because the loss decision “refuses to acknowledge the perjured witnesses, refuses to recognize the governments perspective on the loss in the stock market.” Complainant further argues that the loss decision “is extremely prejudiced/biased,” and that the timing of the decision is “hugely suspicious” because the Subject Judge “had ample time to make this ruling much earlier but chose to do it a few days before [Complainant’s counsel] submitted her report.” In addition, Complainant alleges that the Subject Judge “abused her power” by considering information that should have been “held in complete confidence” under the attorney-client privilege. Complainant further contends that the Subject Judge failed to take appropriate action when a witness allegedly admitted under oath to having committed a felony.

Finally, Complainant argues that his criminal case should be dismissed entirely. He contends that the proceeding allegedly suffers from “perjury, collusion, conflict of interest, and illegal search and seizure, violation of civil rights, mishandling of evidence, mishandling of [an attorney]. I firmly claim that misconduct and disability is pertinent in the above. Any one of the above finding would warrant a dismissal of the case.”

It is apparent that these allegations are intended to challenge the Subject Judge's decisions and rulings rendered throughout the course of the criminal proceeding, culminating in an attempt to collaterally attack the criminal conviction. Thus, the 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."). This is not the appropriate forum for raising such claims. 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 merits-related allegations are subject to dismissal.

Indeed, to the extent that Complainant has grounds on which to challenge his sentence and conviction, such arguments will soon be before the Court of Appeals in the context of his pending appeals. It would be entirely inappropriate to consider their merits in this administrative proceeding. 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).

Next, Complainant alleges that the Subject Judge engaged in a myriad of wrongful conduct, including “obstruction of justice,” “collusion,” and “bias/prejudice.” When viewed apart from the merits-related allegations, however, such claims are unsubstantiated. Accordingly, the 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.

Complainant bolsters his claims that the Subject Judge suffers from a disability by citing a single instance in which the Subject Judge did not recall having received a particular letter. He states that the Subject Judge’s “lack of remembrance of letter that is evidence in this case and is an example of her inability to focus and remember.” In addition, Complainant contends that the Subject Judge “falls asleep in court during trial” and argues that there were instances in which the Subject Judge allegedly did not respond to objections at trial, reflecting that she “is not engaged . . . .”

Complainant’s disability claims lack support. A single instance in which a judge does not recall one document does not reasonably give rise to a conclusion that the judge suffers from a condition “rendering a judge unable to discharge the duties of the particular judicial office.” See Rule 3(e), Rules for Judicial-Conduct and Judicial-Disability Proceedings (defining “disability”). Moreover, despite the substantial volume of exhibits

appended to the complaint, Complainant does not provide anything more than vague generalizations in support of the allegation that the Subject Judge was not adequately “engaged” at trial. A review of the transcripts of Complainant’s trial reveals that there is no basis for Complainant’s claims. Rather, the record reflects that the Subject Judge participated actively throughout the course of the proceeding and consistently ruled upon counsels’ objections where appropriate.<sup>3</sup> Accordingly, the allegations are dismissed. 28 U.S.C. § 352(b)(1)(A)(iii); Rule 11(c)(1)(C), (D), Rules for Judicial-Conduct and Judicial-Disability Proceedings.

Finally, Complainant seeks the Subject Judge’s recusal from his criminal proceeding. Complainant has never filed a motion for the Subject Judge’s recusal. A motion for recusal must be presented to the Subject Judge in the first instance. Moreover, a decision on a recusal motion is merits-related and therefore does not constitute cognizable misconduct. See 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”); see also 28 U.S.C. § 352(b)(1)(A)(ii); Rule 11(c)(1)(B), 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).

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<sup>3</sup> Notably, Complainant’s counsel has not raised any of these questions about the fundamental integrity of the trial in Complainant’s appellate brief, further undermining Complainant’s contentions.

s/ Theodore A. McKee  
Chief Judge

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ORDER

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(Filed: February 24, 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)(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 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: February 24, 2015