

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

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J.C. No. 03-14-90085

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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 11, 2014

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).

Beginning in January 2013, Complainant, a prisoner, filed nine petitions for a writ of habeas corpus.<sup>1</sup> The petitions were referred to a Magistrate Judge, who issued a report and recommendation typically within less than two weeks after the petition was filed. Complainant consistently filed objections to the Magistrate Judge's reports and recommendations. In each of the nine cases, the Subject Judge issued a final order considering Complainant's objections, reviewing the record *de novo*, adopting the report and recommendation, and denying the petition. In all nine cases, the final orders were issued within two months or less after the petition was filed. Complainant did not file appeals from any of the nine final orders denying the habeas petitions.

In this complaint of judicial misconduct, Complainant alleges that the Subject Judge engaged in conduct prejudicial to the effective and expeditious administration of the business of the courts. Specifically, Complainant alleges that the Subject Judge, acting "with improper motive," "habitually delayed in many unrelated cases" and "refus[ed] to recuse for ill-motivated reasons." Complainant does not further elaborate upon these allegations, but states that the "accusations are evident on the face of the record pertaining to the nine federal writs of habeas corpus. . . ."

A review of the docket sheets reveals that, although Complainant filed numerous letters, motions, and notices in the nine habeas proceedings, he never filed a motion for the Subject Judge's recusal. A motion for recusal must be presented to the Subject Judge

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<sup>1</sup> Although Complainant has continued to file additional petitions, opinion is limited to Complainant's allegations concerning the nine petitions specifically identified in his complaint.

in the first instance. Moreover, a decision on a recusal motion is merits-related. 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”). 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 allegations concerning a failure to recuse are subject to dismissal.

A claim of inappropriate delay also generally does not constitute cognizable 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 a particular case. See Rule 3 Commentary, Rules for Judicial-Conduct and Judicial-Disability Proceedings. Delay may, however, qualify as cognizable judicial misconduct where “the allegation concerns . . . habitual delay in a significant number of unrelated cases.” Rule 3(h)(3)(B), Rules for Judicial-Conduct and Judicial-Disability Proceedings.

Here, even if I were to accept that Complainant’s nine habeas petitions could be considered “unrelated cases” for purposes of Rule 3, there is no factual support for Complainant’s allegations of habitual delay. Rather, the record unequivocally shows that

Complainant's petitions all were promptly resolved within two months of filing. Because the record refutes Complainant's claim, these allegations are dismissed as 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.

For the foregoing reasons, the complaint is dismissed pursuant to 28 U.S.C. §§ 352(b)(1)(A)(ii) and (iii).<sup>2</sup>

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s/ Theodore a. McKee  
Chief Judge

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<sup>2</sup> Complainant raises additional allegations concerning the Subject Judge, including claims of conspiracy and enticement into slavery, in supplements to the complaint that were not submitted under penalty of perjury. See Rule 6, Rules for Judicial-Conduct and Judicial-Disability Proceedings. I have considered these allegations pursuant to Rule 5, Rules for Judicial-Conduct and Judicial-Disability Proceedings, and conclude they do not provide "reasonable grounds for inquiry" into the existence of misconduct. I therefore decline to identify any complaints based on these allegations. Rule 5, Rules for Judicial-Conduct and Judicial-Disability Proceedings.

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ORDER

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Filed: December 11, 2014

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 11, 2014