

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

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J.C. No. 03-15-90003

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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: April 30, 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”). 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).

In November 2014, Complainants, a married couple, filed a motion to proceed *in forma pauperis* and a motion for a preliminary injunction, accompanied by a civil complaint concerning a state court foreclosure proceeding. The Subject Judge denied the

preliminary injunction. Complainants promptly filed an emergency motion for reconsideration. Because the Subject Judge was unavailable and the motion was filed as an emergency, a different District Judge, who was assigned as an emergency judge and who is not named in this complaint of judicial misconduct, denied reconsideration.

The following month, the Subject Judge entered an order, which granted the motion to proceed *in forma pauperis*, again denied a preliminary injunction, and dismissed the complaint for lack of subject matter jurisdiction. The District Court Clerk's Office then formally docketed the complaint and closed the case. Complainants did not file an appeal.

In this complaint of judicial misconduct, Complainants allege the Subject Judge "disposed of a matter that was not before him" because "[t]he complaint in this matter was not filed until after [the Subject Judge] closed the case." Based upon this, Complainants contend that the Subject Judge "did not act efficiently and fairly did not regard Plaintiffs constitutional right to be heard did not resolve issues in this matter diligently." In addition, Complainants allege that, when they attempted to file their preliminary injunction motion, the Subject Judge "went to the United States Marshalls Office on the 2nd floor the Marshalls was told to put [Complainants] out of the building that we could no longer handle our court related business at the Clerk of Courts Office. . . . We were told that [the Subject Judge] wanted to lock us up." According to Complainants, the U.S. Marshal "led us to believe that [the Subject Judge] was very furious to want to have us locked up for trying to file our case related documents with the court. . . . We were

threatened by [the Subject Judge's] outrage." Complainants state that they "suffered embarrassment" due to this alleged "injustice."

I requested that the Subject Judge respond to Complainants' allegations. After review of the record and the Subject Judge's response, I address the allegations of the complaint.

As an initial matter, it is clear that Complainants disagree with the merits of the decisions and rulings that the Subject Judge rendered in the course of their short-lived proceeding before him. In particular, they contest procedural matters, such as the propriety of having a different District Judge address their emergency motion, as well as the decision to issue orders "prior to the forma pauperis being approved." All such 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.").

If Complainants had wished to challenge the merits of the Subject Judge's decisions and rulings, they should have filed an appeal from the final judgment entered in the case. 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). Merits-related allegations do not constitute cognizable judicial misconduct. 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.

Accordingly, these allegations 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.

Next, Complainants raise allegations concerning their interaction with a United States Marshal on the day they filed their motion for a preliminary injunction. First, Complainants allege that they were “prohibited from exercising our due process rights.” This, however, is undermined by the record, which reflects that Complainants filed their motion that day, and continued to file motions and other documents thereafter. The claim that Complainants were denied access to the court is therefore 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.

Next, Complainants allege that they were escorted from the courthouse by the United States Marshal Service after they filed their motion for a preliminary injunction. In his response to the complaint, the Subject Judge clarified issues concerning the involvement of the United States Marshals Service on this date. The Subject Judge reiterated that he never interacted directly with the Complainants, who filed their preliminary injunction motion in the morning and then remained in the Clerk’s office awaiting a decision for the entire day. According to the Subject Judge, Complainants contacted the Subject Judge’s courtroom deputy several times by phone to request a ruling; the interactions were, at times, aggressive, and the courtroom deputy expressed her

discomfort to the Subject Judge. By the late afternoon, when the Subject Judge reached a decision, he advised the United States Marshal to provide them a copy of the decision and stated that, because Complainants had no further business with the court that day, they should leave the building. The Subject Judge did not direct the Marshal to tell the Complainants they would be “locked up.”

Viewing Complainants’ allegations in light of the Subject Judge’s response, particularly considering both their decision to remain in the Clerk’s office for the entire day and their interactions with the Subject Judge’s courtroom deputy, the Subject Judge’s decision to involve the United States Marshals Service does not give rise to an inference that judicial misconduct has occurred. Due to increasing threats and acts of violence against federal judges and their families, the Judicial Conference of the United States has identified judicial security as a key priority. To that end, judges are advised to notify the United States Marshals Service of any communications or interactions that possibly could be considered threatening. Here, Complainants’ behavior made court personnel uncomfortable, and the Subject Judge cannot be faulted for raising a concern based upon it. There is no indication that the Subject Judge engaged the United States Marshals Service in order to threaten or intimidate Complainants, or for any improper purpose whatsoever.

With regard to Complainants’ allegation that “[w]e were told that [the Subject Judge] wanted to lock us up,” even accepting the allegation as true, it is beyond the scope of this matter to investigate the propriety of any statements the United States Marshal may

have made in his interaction with Complainants. A United States Marshal is not a judge, and is not covered by the Judicial Conduct and Disability Act or by the Rules for Judicial-Conduct and Judicial-Disability Proceedings. A complaint filed under the Rules “may concern the actions or capacity **only of judges . . .**” Rule 4, Rules for Judicial-Conduct and Judicial-Disability Proceedings (emphasis added). Thus, allegations concerning statements allegedly made by the United States Marshal will not be addressed in this opinion. See 28 U.S.C. §§ 351, 352(b)(1)(A)(i); Rule 4, Rules for Judicial-Conduct and Judicial-Disability Proceedings. As previously noted, the Subject Judge has stated that he did not direct the United States Marshal to make this remark. Accordingly, Complainants’ remaining accusations are dismissed as unsupported by evidence that would raise an inference that misconduct occurred. 28 U.S.C. § 352(b)(1)(A)(iii); Rule 11(c)(1)(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

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

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J.C. No. 03-15-90003

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IN RE: COMPLAINT OF JUDICIAL MISCONDUCT  
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ORDER

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Filed: April 30, 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: April 30, 2015