

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

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J.C. No. 03-15-90025

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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 24, 2015)

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 Court of Appeals Judge (hereinafter “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).

As a preliminary matter, Complainant makes allegations concerning individuals who are not subject to the Judicial Conduct and Disability Act; e.g., clerk’s office and

prison employees. See 28 U.S.C. §§ 351, 352(b)(1)(A)(i); Rule 4, Rules for Judicial-Conduct and Judicial-Disability Proceedings. Accordingly, these allegations will not be addressed in this opinion.

Complainant further alleges that the Subject Judge participated in “gross violations of conduct causing due process violations and [denial of] access to the Court.”

Complainant asserts that the Subject Judge allowed “his law clerks to misconstrue [Complainant’s] motions and then rule on them knowing what the substance is and what relief [Complainant] is seeking.” In particular, he alleges the Subject Judge ruled on a motion “knowing what the clerk misconstrued it as causing [Complainant] to now be untimely with regards to a rehearing.” Complainant further complains about being grouped with other petitioners and not being given “individualized consideration” and contends that the Subject Judge should have seen the “clear pattern of lawlessness” on the part of the clerks. Complainant demands that he be granted “rehearing en banc” because of the “lawlessness of purposely misconstruing [Complainant’s] submission in order to make him untimely.”

In essence, Complainant is dissatisfied with the Subject Judge’s rulings in the course of Complainant’s appeal of a District Court order denying his habeas petition filed under 28 U.S.C. § 2241. After an opinion was issued dismissing his appeal, Complainant was granted an extension of time to file a petition for rehearing en banc. It appears, however, that he thereafter filed a document entitled, “Motion for Leave to Append the Entire Record Seeking Rehearing/Rehearing En Banc.” The Subject Judge

issued an order denying the motion as unnecessary because the Court already had the full record from the District Court before it. After the deadline for the filing of a petition for rehearing en banc passed, the mandate was issued in Complainant's appeal. Complainant thereafter filed a motion objecting to the clerk's act of misconstruing and re-characterizing his submission and requesting reconsideration for rehearing/rehearing en banc. This motion was considered by the Court and denied. To the extent Complainant now seeks to collaterally attack the Subject Judge's rulings on appeal in these administrative proceedings, his allegations are plainly merits-related and, therefore, are not cognizable under the Judicial Conduct and Disability Act. 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). See also 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 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 . . . without more, is merits-related"); 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).

In any event, the record has been reviewed and there is no evidence to support Complainant's allegations of judicial misconduct and they are dismissed as frivolous and unsupported by any 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.

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  
Chief Judge

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ORDER

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(Filed: August 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 Circuit Executive of the Court of Appeals within **35 days** of the date on the letter informing the parties of the Chief Judge's order.

18(b) Form. The petition should be in letter form, addressed to the Circuit Executive 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 Office of the Circuit Executive 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: August 24, 2015