

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

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J.C. No. 03-15-90073

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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: September 11, 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 Magistrate 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 filed a *pro se* civil rights complaint. The presiding District Judge, who is not a Subject Judge of this complaint, referred the matter to the Subject Judge.

Complainant retained counsel and, through counsel, filed an amended complaint. The defendants filed motions to dismiss the amended complaint. Before the motions to dismiss were resolved, counsel withdrew and Complainant notified the District Court that he wished to proceed *pro se*.

The Subject Judge issued a report and recommendation recommending that the motions be granted and the amended complaint be dismissed with prejudice. Complainant filed objections and sought leave to file a second amended complaint. While the motion and objections were pending, Complainant filed a motion to voluntarily dismiss the amended complaint in order to pursue state court remedies. The presiding District Judge granted the motion and dismissed the amended complaint without prejudice.

In this complaint of judicial misconduct, Complainant alleges that the Subject Judge treated Complainant in a “hostile manner with prejudice.” Complainant disagrees with the Subject Judge’s decision not to appoint counsel and alleges that the Subject Judge wrongfully “recommended that plaintiff not be allowed to amend his complaint . . . when it was his right to do so. Which was very hostile and prejudiced. . . .” Complainant claims that the recommendation to dismiss his complaint followed “immediately after” Complainant informed the Subject Judge he was seeking to hire a lawyer; he therefore contends that the recommendation was intended to “prevent[ ] the plaintiff from representation.”

“An allegation that calls into question the correctness of a judge’s ruling, including a failure to recuse, without more, is merits-related.” Rule 3(h)(3)(A), Rules for Judicial-

Conduct and Judicial-Disability Proceedings. Complainant’s allegations challenging the Subject Judge’s orders and recommendations are clearly merits-related. 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. Complainant withdrew the amended complaint before the presiding District Judge had the opportunity to consider the merits of the Subject Judge’s recommendations. In any event, 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). Accordingly, Complainant’s merits-related 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.

Complainant’s allegations of hostile treatment and prejudice are entirely unsubstantiated. The record presents no basis for inferring that the Subject Judge has engaged in any form of judicial misconduct. Accordingly, Complainant’s non-merits-related allegations are dismissed 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.

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

s/ Theodore A. McKee  
Chief Judge

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ORDER

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(Filed: September 11, 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)(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: September 11, 2015