

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

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J.C. No. 03-15-90079

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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: November 9, 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).

Complainant filed a *pro se* complaint civil complaint against the United States, raising claims concerning his invention of an allegedly legal and patent-protected method

for the manufacture of cannabinoids. The matter was assigned to the Subject Judge, who dismissed it *sua sponte* for failure to state a claim. Complainant did not appeal the dismissal. Complainant filed a motion for relief from the judgment, which remains pending. According to the motion, Complainant accompanied the written submission with a sample of his invention, in the form of a “rectal suppository.” Complainant also filed a petition for a writ of mandamus in which he requests that the Court of Appeals direct the Subject Judge to rule upon the motion for relief from the judgment. The mandamus petition was denied.

In this complaint of judicial misconduct, Complainant alleges that, because the Subject Judge dismissed two similar complaints in the past, the Subject Judge “has personal knowledge of the undisputed evidentiary facts concerning the proceedings” and “has an interest in the outcome of the case.” Complainant argues that the Subject judge has “withheld” his motion for relief from the judgment from “being correctly docketed in, and properly reviewed and adjudicated by” the Subject Judge or another District Judge. Finally, Complainant alleges that the Subject Judge “inappropriately” directed four members of the United States Marshals Service and a Sheriff to visit his home “to intimidate me into not providing this Court with critical evidence proving my claim(s). . . .” Complainant claims the Marshals and the Sheriff “threaten[ed] to unlawfully place me under arrest (with no probable cause, explainable reason – and certainly without an arrest warrant).”

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

First, it is clear that this complaint is largely intended to challenge the Subject Judge's decision to dismiss Complainant's case. 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."). 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.

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). Indeed, Complainant's motion for relief from the judgment also seeks to challenge the dismissal, and it currently remains pending before the Subject Judge.<sup>1</sup> Accordingly, the merits-related allegations presented in this complaint

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<sup>1</sup> Complainant's allegation that the Subject Judge "withheld" the motion for relief from judgment is belied by the docket sheet in his proceeding, which shows that the motion was filed and is pending. Accordingly, such an allegation is 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. Moreover, when the Subject Judge rules upon the motion, a disagreement with the decision would be merits-related. See 28 U.S.C. § 352(b)(1)(A)(ii);

of judicial misconduct 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, in the response to the complaint, the Subject Judge clarified issues concerning the decision to involve the United States Marshals Service, providing additional facts not provided in the complaint.<sup>2</sup> Specifically, the Subject Judge stated that the decision to contact the United States Marshals Service was made after the Complainant called chambers and the District Court Clerk's Office, stating that he was filing papers smeared with fecal matter. The Subject Judge explained that, when the stained papers arrived, they were brought to the attention of the Marshals Service for further investigation and appropriate action.

Viewing Complainants' allegations in light of the Subject Judge's response, particularly considering the disturbing revelation about the stained papers, 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, Complainant's filing was inappropriate, unsanitary, and disturbing, and the Subject Judge certainly cannot be faulted for raising a

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Rules 3(h)(3)(A), 11(c)(1)(B), Rules for Judicial-Conduct and Judicial-Disability Proceedings.

<sup>2</sup> There is no indication that the Subject Judge contacted a Sheriff.

concern based upon it. There is no indication that the Subject Judge engaged the United States Marshals Service in order to threaten or intimidate Complainant, or for any improper purpose whatsoever. Accordingly, these 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.

Finally, with regard to Complainant's allegation that the United States Marshals and a Sheriff threatened or intimidated him, it is beyond the scope of this matter to investigate the propriety of the actions of those individuals in their interaction with Complainant. Neither a United States Marshal nor a Sheriff is a judge. Accordingly, they are not covered by the provisions of 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 Marshals or the Sheriff 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.

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: November 9, 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 **42 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: November 9, 2015