

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

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J.C. No. 03-15-90095

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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: January 15, 2016)

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 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, a former police officer, was a defendant in a criminal proceeding before the Subject Judge. After a trial, the jury convicted Complainant of one count, acquitted him of one count, and was hung on all remaining counts. Rather than face a second trial, Complainant pleaded guilty to an additional count and the Subject Judge sentenced him to a lengthy term of imprisonment. Complainant appealed.

The Court of Appeals concluded it would be a miscarriage of justice if the jury's conviction were allowed to stand. The Court of Appeals therefore reversed that conviction and remanded the matter to the Subject Judge for re-sentencing based upon only the count to which Complainant had pleaded guilty. On remand, the Subject Judge imposed the same sentence. Complainant again appealed and the Court of Appeals affirmed the judgment. Complainant filed a motion to vacate, set aside, or correct the sentence under 28 U.S.C. § 2255 and a motion to recuse the Subject Judge. The Subject Judge declined to recuse and the § 2255 motion remains pending.

In this complaint of judicial misconduct, Complainant alleges that the Subject Judge committed various legal errors during the criminal proceeding. For instance, he alleges that the Subject Judge "injected himself in the [plea] negotiations" by informing the parties he would not accept a specific type of plea agreement. Complainant further alleges that, when he asked during the change of plea hearing what rights he had to change his mind, "[the Subject Judge] became agitated and stated I had no rights." In addition, Complainant alleges the Subject Judge refused to explain the definition of "conspiracy" to him. Finally, Complainant alleges that, during re-sentencing, the Subject Judge "gave no

consideration to my post-conviction evidence” as required by U.S. Supreme Court precedent, and notes that the Subject Judge declined to make a change to the presentence investigation report as requested by Complainant’s attorney.

All of these allegations constitute challenges to Complainant’s criminal conviction and sentence; as such, the 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”). Indeed, this complaint of judicial misconduct is nearly identical in substance to Complainant’s motion to recuse the Subject Judge, which the Subject Judge denied. Complainant cannot collaterally attack that ruling here. 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 do not constitute cognizable misconduct under the Judicial Conduct and Disability Act. See 28 U.S.C. §§ 351, 352(b)(1)(A)(i); Rule 4, Rules for Judicial-Conduct and Judicial-Disability Proceedings. Accordingly, the merits-related allegations are dismissed. 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).

Complainant also presents allegations concerning an unsigned, undated letter typed in all capital letters on U.S. Attorney letterhead, which appears to have been mailed to Complainant's former attorney, but which is directed to "your honor" and which Complainant states was "presented to" the Subject Judge prior to sentencing.<sup>1</sup>

Complainant attaches a copy of the letter as an exhibit to the complaint. The letter states that Complainant was framed and that his case "is a miscarriage of justice." It further states that the Subject Judge "hold[s] grudges" about a prior case involving a police officer, "and to quote, '[the Subject Judge] is as predictable as a puppet [Complainant] is buried with [the Subject Judge].' My conscious [*sic*] is clear, push an [*sic*] you will validate the contents of this letter."

Although the meaning of these statements is not entirely clear, Complainant alleges that they indicate that the Subject Judge was planning to impose a severe sentence upon Complainant as a form of retaliation because the Subject Judge was unhappy with a jury's acquittal of another police officer in the unrelated case. Complainant accuses the Subject Judge of wrongfully "fail[ing] to investigate the allegations."

These allegations, accompanied by a copy of the anonymous letter, formed one of the grounds for Complainant's motion to recuse the Subject Judge, which the Subject

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<sup>1</sup> Complainant does not explain the basis for alleging that the Subject Judge received the letter prior to sentencing. Complainant also does not speculate as to its author.

Judge denied. Accordingly, as previously observed, the allegations are subject to dismissal as merits-related.

Moreover, this vague, unattributed letter of dubious origin does not reasonably give rise to a conclusion that the Subject Judge had a duty to conduct an investigation of any type or otherwise engaged in any conduct prejudicial to the effective and expeditious administration of the business of the courts. See Rule 3(h)(1), Rules for Judicial-Conduct and Judicial-Disability Proceedings. To the extent the letter does anything more than dispute the merits of Complainant's conviction and sentence, it is so lacking in any indicia of reliability that no further inquiry is warranted. See Rule 11 Commentary, Rules for Judicial-Conduct and Judicial-Disability Proceedings. These allegations are therefore 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: January 15, 2016)

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 Circuit Executive within **42 days** after the date of the chief judge's order.

18(b) Form. The petition should be in letter form, addressed to the Circuit Executive, 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 and on the Court of Appeals’ internet site, [www.ca3.uscourts.gov](http://www.ca3.uscourts.gov).

s/ Theodore A. McKee  
Chief Judge

Dated: January 15, 2016