

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

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J.C. No. 03-15-90101

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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 29, 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 civilly committed individual, is a frequent pro se litigant in federal court. In July 2014, Complainant mailed a document entitled “FINAL NOTICE” to the

Subject Judge. In it, Complainant sought to have a different District Judge removed as presiding Judge from a number of Complainant's civil cases on the grounds that the presiding Judge "has chosen to [be an] accomplice in some serious crimes being committed including conspiracy to cover up; a series of violent brutal assaults, or violence and bloodshed; etc." In the "FINAL NOTICE," Complainant argued that reassignment to a new District Judge was warranted because the presiding District Judge would not "take an honest look at any of my case[s]."

The Subject Judge did not take action on the "FINAL NOTICE." Complainant states he was informed by District Court staff that he must file a "petition for reassignment" instead. According to Complainant, he promptly did so, but the Subject Judge did not act.<sup>1</sup> Complainant alleges that he attempted to call the Subject Judge's chambers monthly to follow up and was directed by staff to write letters rather than call. Complainant alleges that his letters go unanswered. Complainant expresses frustration at this "circular" logic and alleges this indicates the Subject Judge is "taking this as a joke."

After more than a year passed, Complainant mailed a copy of the "FINAL NOTICE" to the Court of Appeals. He was informed by that Court's Clerk's Office that the Court of Appeals lacks authority to intervene in an ongoing District Court matter absent a case properly before the Court of Appeals. Complainant then filed this complaint of judicial misconduct naming the Subject Judge. Complainant accuses the Subject Judge

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<sup>1</sup> It appears that the District Court Clerk's Office docketed the "petition for reassignment" in several cases as a letter application/petition for recusal of the presiding District Judge. It does not appear that the presiding District Judge acted on the recusal request.

of “cho[osing] to become [an] accomplice in the crimes committed with such criminal neglect, etc.” because the Subject Judge did not act on the “FINAL NOTICE.”

Complainant states that he will soon be filing a separate complaint of misconduct against the presiding District Judge, “the next time [the District Judge] is permitted to sabotage anything by his continued Constitutional disregard.” Complainant also states he “will be forced to submit a PETITION FOR WRIT OF MANDAMUS” presenting these allegations, but he has not yet done so.<sup>2</sup>

Much of this complaint of judicial misconduct is concerned with the fact that the Subject Judge did not direct the presiding District Judge to recuse from Complainant’s cases. The Subject Judge does not have authority to direct the presiding District Judge’s recusal, however. A proper motion for recusal must be filed in the cases to which it pertains and must be directed to the presiding District Judge in the first instance. These allegations do not implicate any responsibility on the part of the Subject Judge, and are therefore dismissed as frivolous and unsupported by evidence that would raise an inference that misconduct has occurred.<sup>3</sup> 28 U.S.C. § 352(b)(1)(A)(iii); Rule 11(c)(1)(C), (D), Rules for Judicial-Conduct and Judicial-Disability Proceedings.

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<sup>2</sup> Complainant filed two petitions for a writ of mandamus in 2015, but neither concerned the same presiding District Judge that prompted his “FINAL NOTICE” to the Subject Judge.

<sup>3</sup> Moreover, the presiding District Judge’s decision on a recusal motion would be merits-related. “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. Merits-related allegations are not cognizable misconduct under the Judicial Conduct and Disability Act. See 28 U.S.C.

Complainant's remaining allegations concern actions taken by District Court staff – namely, the allegations of “circular” instructions, wherein individuals instruct Complainant to put his concerns in writing, then allegedly fail to respond to his written letters. Once again, these allegations do not implicate the Subject Judge, as they do not concern properly filed motions in any cases pending before him. Rather, responding to litigants' phone calls and letters is a responsibility of District Court Clerk's Office staff. While Complainant clearly is frustrated, such individuals are not covered by the Judicial Conduct and Disability Act and their alleged actions 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.

There is nothing to indicate that the Subject Judge played any role in regard to how the Clerk's Office staff may have responded (or failed to respond) to Complainant's phone calls and letters. Accordingly, to the extent the allegations pertain to the Subject Judge, 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). Complainant has filed at least three prior judicial misconduct complaints that were dismissed on these grounds. See J.C. Nos. 03-09-90125; 03-10-90051; 03-13-90089. Complainant's attention is therefore directed to Rule 10(a), § 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).

Rules for Judicial-Conduct and Judicial-Disability Proceedings.<sup>4</sup> Complainant is cautioned that future abuse of the judicial misconduct complaint procedure may result in the imposition of restrictions under this provision.

s/ Theodore A. McKee  
Chief Judge

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<sup>4</sup> Rule 10(a), Rules for Judicial-Conduct and Judicial-Disability Proceedings, states:

Abusive Complaints. A complainant who has filed repetitive, harassing, or frivolous complaints, or has otherwise abused the complaint procedure, may be restricted from filing further complaints. After giving the complainant an opportunity to show cause in writing why his or her right to file further complaints should not be limited, a judicial council may prohibit, restrict, or impose conditions on the complainant's use of the complaint procedure. Upon written request of the complainant, the judicial council may revise or withdraw any prohibition, restriction, or condition previously imposed.

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ORDER

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(Filed: January 29, 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)(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 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 29, 2016