

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

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J.C. Nos. 03-16-90040, 03-16-90041

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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 8, 2016)

PRESENT: AMBRO, Circuit Judge.<sup>1</sup>

This is a complaint filed under the Judicial Conduct and Disability Act, 28 U.S.C. §§ 351-64, against a United States Circuit Judge (“Subject Judge I”) and a United States District Judge (“Subject Judge II”). 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

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<sup>1</sup> Acting as chief judge for purposes of disposition of this complaint pursuant to Rule 25(f), Rules for Judicial-Conduct and Judicial-Disability Proceedings.

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).

This complaint concerns three petitions for a writ of habeas corpus filed pro se in December 2015 by three prisoners, but not by Complainant.<sup>2</sup> The three habeas petitioners each separately filed nearly identical petitions claiming they have been illegally detained in the absence of a conviction or sentence for many years. Two of the three petitions are assigned to Subject Judge II; the third is assigned to a different District Judge not named in the complaint. Each petition was referred to a Magistrate Judge, who directed that the petitions should be re-filed as complaints pursuant to 28 U.S.C. § 1983. The petitioners sought, and were granted, additional time in which to file the § 1983 complaints. To date, the complaints have not been filed. All three petitions remain pending.

Complainant alleges that, because the three petitioners have not been granted relief by Subject Judge II, Complainant mailed a petition on their behalf to the chambers of Subject Judge I. Subject Judge I did not act on that petition. Complainant claims that, by “refus[ing] to process” the petitions, Subject Judges I and II have behaved in a “racist and entirely lawless” manner. Complainant accuses the Subject Judges of criminal obstruction and of participation in a conspiracy to violate the three petitioners’ constitutional rights.

Much of this complaint of judicial misconduct presents argument concerning why, in Complainant’s view, the three habeas petitions have merit and should be granted.

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<sup>2</sup> Complainant does not explain his relationship to the three pro se habeas petitioners.

Clearly, 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 misconduct under the Judicial Conduct and Disability Act. See 28 U.S.C. § 352(b)(1)(A)(ii); Rule 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). Accordingly, these allegations are subject to dismissal.

Complainant’s allegation that Subject Judge II has “refused to process” the habeas petitions can be viewed as a claim of delay in resolving those petitions. Delay also is not generally cognizable as judicial misconduct because it effectively poses a challenge to merits of official actions by the judge – *i.e.*, the decision to assign a lower priority to a particular case. See Rule 3 Commentary, Rules for Judicial-Conduct and Judicial-Disability Proceedings. A claim of delay in a single case may qualify as cognizable judicial misconduct only if “the allegation concerns an improper motive in delaying a particular decision . . . .” Rule 3(h)(3)(B), Rules for Judicial-Conduct and Judicial-Disability Proceedings.

While the habeas petitions have been pending for several months, there is nothing in the record to substantiate a claim that any delay is the result of improper motive on the part of Subject Judge II. Indeed, in all three proceedings, the petitioners requested and were granted additional time in which to file a § 1983 complaint. Complainant's claims of racism, obstruction, and conspiracy appear to be based on nothing more than suspicion and subjective belief. Accordingly, Complainant's allegations are subject to dismissal as unsupported by evidence that would raise an inference that misconduct has occurred. See 28 U.S.C. § 352(b)(1)(A)(iii); Rule 11(c)(1)(D), Rules for Judicial-Conduct and Judicial-Disability Proceedings.

Finally, Complainant's claim that Subject Judge I engaged in misconduct by "refusing to process" his document submitted on behalf of the three habeas petitioners is patently frivolous. Putting aside the issue of whether Complainant, a non-lawyer, has any authority to submit court documents on behalf of other individuals, the Federal Rules of Appellate Procedure provide that any paper to be filed in a Court of Appeals must be filed with the Clerk. Fed. R. App. P. 25(a)(1). Complainant expressly acknowledges that he mailed this petition to Subject Judge I's chambers directly, instead of properly filing it with the Clerk. A Circuit Judge may not act on a substantive legal matter unless it is in the context of a properly filed case to which he has been assigned by the Clerk's Office. Because Complainant's document was neither properly filed nor assigned by the Clerk to Subject Judge I, Subject Judge I did not have an obligation to act upon it. These

allegations are therefore dismissed. 28 U.S.C. § 352(b)(1)(A)(iii); Rule 11(c)(1)(C), Rules for Judicial-Conduct and Judicial-Disability Proceedings.

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

s/ Thomas L. Ambro  
Circuit Judge

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

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ORIGINAL PROCEEDINGS UNDER 28 U.S.C. § 351

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ORDER

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(Filed: September 8, 2016)

PRESENT: AMBRO, Circuit Judge.<sup>1</sup>

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.

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<sup>1</sup> Acting as chief judge for purposes of disposition of this complaint pursuant to Rule 25(f), Rules for Judicial-Conduct and Judicial-Disability Proceedings.

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).

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s/ Thomas L. Ambro  
Circuit Judge

Dated: September 8, 2016