

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

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J.C. No. 03-13-90040

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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: August 16, 2013)

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 is a state prison inmate. Complainant alleges that, in October 2012, he was the victim of a physical assault by a fellow inmate, which has caused him to live

with severe “chronic physical and emotional pain.” Complainant further alleges that the prison has been deliberately indifferent to his medical needs.

In November 2012, Complainant filed a petition for an emergency injunction seeking immediate medical care, which was assigned to the Subject Judge. Complainant filed a supplement to the petition in January 2013. The defendants filed motions to dismiss the complaint. In March 2013, the Subject Judge entered an order dismissing the complaint without prejudice for failure to provide adequate proof of exhaustion of administrative remedies. Complainant filed a motion to vacate the order, reiterating his position that he had exhausted his administrative remedies. In June 2013, the Subject Judge denied the motion to vacate. Complainant did not appeal.

In this judicial misconduct complaint<sup>1</sup>, Complainant alleges that the Subject Judge has engaged in conduct prejudicial to the effective and expeditious administration of the business of the courts. Specifically, Complainant alleges that he adequately proved exhaustion of administrative remedies, and the Subject Judge’s order dismissing his complaint was therefore erroneous. He states, “the judge complained of . . . continues to fail and/or refuse to recognize pro se plaintiff’s pleadings & exhibits ‘proving’ that he has exhausted his administrative remedies in accordance with the requirements of the

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<sup>1</sup> Complainant filed the initial complaint in May 2013. He filed supplements to the complaint in June, July, August, and September, all containing allegations made under the penalty of perjury. All of Complainant’s allegations have been considered.

P.L.R.A.!” Based upon these allegations, Complainant demands the Subject Judge’s recusal.<sup>2</sup>

Clearly, these allegations reflect Complainant’s disagreement with the Subject Judge’s decisions and rulings – in particular, her determination that Complainant failed to adequately prove that he exhausted his administrative remedies. “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 merits-related allegations are not cognizable as judicial misconduct.

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 allegations are subject to dismissal. 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.

Apart from the merits-related allegations, Complainant alleges that his petitions for an emergency injunction and his motion to vacate “have [not] been properly adjudicated

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<sup>2</sup> This administrative proceeding is not a proper forum in which to move for a judge’s recusal. In this case, the proper course would have been for Complainant to file a motion for recusal in the District Court. I note that a decision on a recusal motion is merits-related and is not cognizable misconduct. See Rule 3(h)(3)(A), Rules for Judicial-Conduct and Judicial-Disability Proceedings.

by the judge complained of,” which has caused him to be “obstructed from proceeding any further in the trial court, and/or in the appellate court.” Specifically, Complainant contends the Subject Judge improperly delayed rendering rulings in his case.

For instance, when he initially filed the complaint in May 2013, Complainant alleged, “It has been almost 2 months since your pro se complainant mailed his pleadings . . . and the lower court has not responded to either. Meanwhile, your pro se complainant continues to languish in chronic physical and emotional pain without any medical care whatsoever!!!” After Complainant received the Subject Judge’s order denying his motion to vacate, Complainant supplemented his complaint by alleging that the motion should not have been “pending before her for over 3 months and without any lawful explanation whatsoever.”

A claim of delay in a single proceeding may qualify as cognizable misconduct only where “the allegation concerns an improper motive in delaying a particular decision. . . .” Rule 3(h)(3)(B), Rules for Judicial-Conduct and Judicial-Disability Proceedings. Complainant does not explicitly allege an improper motive on the part of the Subject Judge, nor does the record provide any evidence to substantiate such an allegation. Indeed, as a factual matter, the record does not reflect periods of extreme or unusual delay. Accordingly, Complainant’s claim is 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: August 16, 2013)

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 of the Court of Appeals within **35 days** of the date on the letter informing the parties of the Chief Judge's order.

18(b) Form. The petition should be in letter form, addressed to the Circuit Executive 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 Office of the Circuit Executive 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: August 16, 2013