

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

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J.C. No. 03-13-90041

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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 27, 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 and frequent pro se litigant. He filed a petition for a writ of habeas corpus in District Court. In July 2012, the petition was

transferred to a different District Court and was assigned to the Subject Judge. In November 2012, the Subject Judge entered an order concluding that the petition should be dismissed because Complainant had an earlier-filed petition that was pending. Complainant moved to strike the order, and the Subject Judge denied the motion to strike. In January 2013, Complainant filed a notice of appeal. The appeal was dismissed as untimely filed.

In this judicial misconduct complaint, Complainant alleges that the Subject Judge's dismissal of his habeas corpus petition "was improper and an illegal suspension of the writ in violation of US Constitution Article I Sec. 9(2) and Amendments 1, 5, 6, 9, 14, and vindictive, malicious denial of due process and fair and impartial judge. . . ." Clearly, this reflects Complainant's disagreement with the Subject Judge's decision. "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 as judicial misconduct. Id.

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). Complainant's merits-related allegations are

therefore 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.

In addition, Complainant alleges that the Subject Judge “sits in defiance of US Constitution articles II, III whereas he was never elected as constitutionally required.” Complainant contends that the Subject Judge was improperly appointed to the federal bench as a result of actions by a “corrupt” senator, who was part of a group Complainant describes as the “Unholy Trio Gang.” Complainant alleges that this gang “are judicial-political corruption merchants who have corrupted and compromised the District Courts and Court of Appeals Judges within the Third Circuit and use said judges as a weapon against [Complainant] to retaliate and to block his meaningful access to courts and relief.”

Complainant repeatedly has raised similar allegations concerning the “Unholy Trio Gang” in his numerous filings in District Court and in the Court of Appeals. To the extent Complainant is attempting to relitigate issues already addressed in court actions, the allegations are merits-related and therefore non-cognizable. 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.

Moreover, Complainant’s implausible and uncorroborated assertions about the Subject Judge’s alleged collusion with the “Unholy Trio Gang” fall far short of presenting a colorable claim of judicial misconduct. The record reflects no evidence of impropriety and no reasonable basis for questioning the validity of the Subject Judge’s appointment to the federal bench. Accordingly, Complaint’s 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.

For the foregoing reasons, the complaint is dismissed pursuant to 28 U.S.C. §§ 352(b)(1)(A)(ii) and (iii). This is Complainant's third judicial misconduct complaint to be dismissed as merits-related and frivolous pursuant to 28 U.S.C. §§ 352(b)(1)(A)(ii) and (iii). See also J.C. Nos. 03-10-90008, 03-12-90049. Given the merits-related and frivolous nature of the allegations of the prior and instant complaints, Complainant's attention is directed to Rule 10(a), Rules for Judicial-Conduct and Judicial-Disability Proceedings.<sup>1</sup> Future abuse of the complaint procedure may result in the imposition of restrictions under that rule.

    /s/ Theodore A. McKee  
Chief Judge

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<sup>1</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: September 27, 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: September 27, 2013