

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

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J.C. No. 03-13-90052

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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: October 30, 2013

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 (hereinafter “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). 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).

As a preliminary matter, Complainant makes allegations concerning individuals and entities who are not subject to the Judicial Conduct and Disability Act; e.g., the District Court Clerk. See 28 U.S.C. §§ 351, 352(b)(1)(A)(i); Rule 4, Rules for Judicial-Conduct and Judicial-Disability Proceedings. Accordingly, these allegations will not be addressed in this opinion.

Complainant further alleges that the Subject Judge "through his chambers has violated the Judicial Code of Conduct by initiating communications with the prosecution...concerning the government's failure to respond to the court order . . . ." This allegation of judicial misconduct appears to be premised on a letter from the Assistant United States Attorney to the Subject Judge stating that after "being contacted by your chambers, I realized that I failed to respond to the defendant's Section 2255 petition" by a certain date. The Assistant United States Attorney went on to request an extension of time to file a response, which was granted. According to Complainant, "the District Court violated the Judicial Code of Conduct by signing off on an ex parte communication as if the District Court issued an official order."

Complainant's allegations of misconduct are subject to dismissal. The Code of Conduct for United States Judges explicitly authorizes judges to "permit ex parte communication for scheduling, administrative, or emergency purposes . . . ." Canon

3(A)(4)(b). Here, the record reflects that someone from the Subject Judge’s chambers contacted the Assistant United States Attorney about an overdue response requested by the Court. Even assuming *arguendo* that this contact was authorized by the Subject Judge, this is plainly a communication made for a permissible administrative purpose. Id. Furthermore, Complainant was informed of the communication because the Assistant United States Attorney’s letter discussing it and requesting an extension was put on the public docket and mailed to Complainant. In addition, on this same publicly docketed letter, the Subject Judge hand-wrote under the heading “Order” that the “Request for Extension . . . . is granted.” Accordingly, there was no improper ex parte communication and Complainant’s allegations 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.

Complainant also makes various allegations which, although not entirely clear, appear to relate to the Subject Judge’s denial of his motion under Section 2255 and revocation of his supervised release.<sup>1</sup> For example, Complainant states that the District Court deprived him of due process by failing to address his objection, the District Court failed to accept or deny “the Plaintiff’s appointment of fiduciary,” and the District Court failed to address an order of the Third Circuit “negating any violations of an alleged supervised release”. These allegations are merits-related and are not cognizable under the

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<sup>1</sup> Complainant’s appeal of this order is still pending.

Judicial Conduct and Disability Act. 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 3(h)(3)(A), Rules for Judicial-Conduct and Judicial-Disability Proceedings (“[a]n allegation that calls into question the correctness of a judge’s ruling, including a failure to recuse, without more, is merits-related”); 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). In any event, there is no evidence to support Complainant’s allegations of misconduct and 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.

Complainant’s remaining allegations of judicial misconduct are also without merit. For example, Complainant maintains that the District Court has committed fraud and engaged in “kidnapping, assault, plunder, trafficking in slavery, etc.” There is no evidence to support these serious allegations and they are dismissed as frivolous and unsupported by any evidence that would raise an inference that misconduct has occurred.

Id.

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

/s/ Theodore A. McKee  
Chief Judge

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ORDER

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Filed: October 30, 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)(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 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: October 30, 2013