

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

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J.C. No. 03-16-90016

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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: April 18, 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 was an unsuccessful pro se plaintiff in three federal lawsuits concerning her eviction from her co-op unit. She recently filed a fourth complaint, which was assigned to the Subject Judge. The Subject Judge issued an order directing Complainant to show cause why the complaint should not be dismissed on grounds of res judicata, collateral estoppel, and immunity. Among other things, the Subject Judge stated that Complainant's most recent claims "seem to this Court to be patently frivolous." Complainant responded to the show cause order. The matter remains pending.

In this complaint of judicial misconduct, Complainant recounts the basis for her four lawsuits concerning her allegedly wrongful eviction, including claims that she suffered racial discrimination and is the victim of a hate crime. She contends that every judge involved so far has "participated in this conspiracy, cover-up and deprivation of my rights to my stolen home that I legally own with a mortgage." With regard to the Subject Judge specifically, Complainant alleges that the statement that the complaint is frivolous indicates "that she either did not read the case file or she is corrupt. Either way, [the Subject Judge] is not a fair judge for my case."

It is readily apparent that Complainant disagrees with the Subject Judge's order to show cause. Allegations challenging that order are 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. The Subject Judge has not yet ruled on Complainant's response to

the order to show cause and has not entered a final decision in her case. When a final decision ultimately is entered, this administrative proceeding does not provide a substitute for pursuing a proper appeal. 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).

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) (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 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). Accordingly, all such allegations are dismissed.

Apart from her disagreement with the merits of the Subject Judge’s order to show cause, Complainant provides nothing to substantiate her highly implausible claim that the Subject Judge is involved in a conspiracy against her. In addition, to the extent Complainant focuses on the Subject Judge’s use of the term “frivolous” in describing her complaint, this word does not provide evidence of impropriety. Rather, this is a commonly employed and acceptable legal term of art, which means that a complaint lacks

arguable basis either in law or in fact. See Neitzke v. Williams, 490 U.S. 319, 325 (1989) (defining “frivolous”). While Complainant may disagree with the merits of the conclusion that her complaint is frivolous, the use of the term certainly does not give rise to a reasonable inference of judicial misconduct. Because Complainant’s allegations of judicial misconduct are entirely unsubstantiated, they 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). Previously, Complainant filed three other judicial misconduct complaints naming three other District Judges, each of which was dismissed on these grounds. See J.C. Nos. 03-13-90082, 03-14-90003, and 03-14-90006. In the opinion dismissing J.C. Nos. 03-14-90003 and 03-14-90006, Complainant was warned that future abuse of the judicial misconduct complaint procedure could result in the imposition of filing restrictions under Rule 10, Rules for Judicial-Conduct and Judicial-Disability Proceedings.

Complainant nonetheless filed this complaint, which once again is merits-related, frivolous, and unsupported. Accordingly, a copy of this Memorandum Opinion and Order will be transmitted to the Judicial Council to determine whether to issue an order to show cause why Complainant should not be enjoined from filing further complaints under the

Judicial Conduct and Disability Act. See Rule 10(a), Rules for Judicial-Conduct and Judicial-Disability Proceedings.<sup>1</sup>

s/ Theodore A. McKee  
Chief Judge

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<sup>1</sup> Rule 10(a) of the Rules of Judicial-Conduct and Judicial-Disability Proceedings provides:

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, the 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: April 18, 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)(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  
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Chief Judge

Dated: April 18, 2016