

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

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J.C. No. 03-16-90032

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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: July 14, 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 Magistrate Judge (the “Subject Judge”).<sup>1</sup> 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> The complaint also named a deceased District Judge, but was not accepted for filing as to the deceased District Judge. Complainant was informed by letter that a complaint of judicial misconduct may be filed only against judges currently holding an office described in Rule 4 of the Rules for Judicial-Conduct and Judicial-Disability Proceedings. See Rule 8(c), 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).

In 2009, Complainant filed a pro se civil complaint against a city, a state, and a municipal parking authority seeking \$500 trillion in monetary damages for time spent defending the imposition of a parking ticket. The matter was assigned to a District Judge, who referred it to the Subject Judge for pretrial purposes. The docket reflects that the Subject Judge oversaw a pretrial conference and otherwise had minimal involvement in the case. The defendants filed a motion to dismiss the complaint. The District Judge granted Complainant leave to amend the complaint for purposes of stating an equal protection claim. Because Complainant did not file an amended complaint, the District Judge later dismissed the complaint for failure to state a claim. Complainant did not appeal the judgment.

In this complaint of judicial misconduct, Complainant has provided what appear to be unattributed excerpts from articles or treatises on various legal concepts, including industrial espionage, forgery, bad faith insurance claims settlement practices, and contempt of court. In between these excerpts, Complainant has inserted, in all capital letters, largely unintelligible references to his proceeding before the Subject Judge as well as various other observations. For instance, Complainant refers to the parking ticket that caused him to file his pro se complaint, and then states that someone “STOLE THE CHECK CHANGED THE NAME . . . IF YOU DO NOT DO YOUR JOBS AS A GOV’T

OFFICE I WILL BE SUING THE COURT SYSTEM.” Later, Complainant provides this observation: “WHAT IS \$500TRILL BUT AS THEY SAY WHEN A KID HAS A BASEBALL CARD AND YOU WEER [sic] MEAN TO HIM . . . AND NOW YOU FOUND OUT HE HAS THE BASEBALL CARD YOU WANT WHAT IS THE COST OF IT – SO THAT WHAT THE SUE AMOUNT WAS ABOUT SO HAVE FUN WITH IT NOW.” Complainant concludes the complaint by stating, “YES AND THESE [sic] IS ALL OVER A PARKING TICKET THEY WERE NOT NICE AND YES I KNOW THEY ARE FED SO WHO CARES . . . THEY CHEATED . . . .”

Because the portions of the complaint concerning the Subject Judge and Complainant’s civil action are incomprehensible, it is difficult to determine whether Complainant is attempting to challenge the merits of any decision or action by the Subject Judge. “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 do not constitute cognizable misconduct. Accordingly, to the extent the complaint presents any merits-related allegations, they 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.

It also is unclear whether Complainant is attempting to allege that the Subject Judge engaged in any of the illicit activities described in the articles Complainant cites, as he does not provide any explanation or context for them. A review of the record provides

no support whatsoever for any claims that the Subject Judge engaged in industrial espionage, forgery, bad faith insurance claims settlement practices, or contempt of court. Indeed, the record provides no support for a claim of judicial misconduct at all. Accordingly, such allegations are subject to dismissal 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.

Based on the foregoing, the complaint is dismissed pursuant to 28 U.S.C. §§ 352(b)(1)(A)(ii) and (iii). Complainant's attention is directed to Rule 10(a), Rules for Judicial-Conduct and Judicial-Disability Proceedings. Future abuse of the judicial misconduct complaint procedure may result in the imposition of restrictions under this provision.

s/ Theodore A. McKee  
Chief Judge

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ORDER

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(Filed: July 14, 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  
Chief Judge

Dated: July 14, 2016