

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

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J.C. Nos. 03-16-90044, 03-16-90045

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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 21, 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 (“Subject Judge I”) and a United States Magistrate Judge (“Subject Judge II”). 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, a state prisoner, filed a pro se petition for a writ of habeas corpus in 2011. Subject Judge II issued a report and recommendation recommending that the petition be denied without prejudice for failure to exhaust state remedies. Complainant filed objections. Subject Judge I overruled the objections, approved and adopted Subject Judge II's report and recommendation, and dismissed the petition without prejudice.

In 2015, Complainant filed another petition for a writ of habeas corpus. Subject Judge I dismissed the petition for lack of subject matter jurisdiction as a second or successive petition not authorized by the Court of Appeals under 28 U.S.C. § 2244. Complainant then filed a motion in the Court of Appeals under § 2244. The Court of Appeals determined that, because the 2011 petition had been dismissed without prejudice, the second petition was not "second or successive" for purposes of § 2244 and Complainant therefore did not require authorization to file it. The Court of Appeals then transferred the 2015 petition back to the District Court. The matter has been reopened and the petition is pending before Subject Judge I.

In this complaint of judicial misconduct<sup>1</sup>, Complainant alleges that the Subject Judges intentionally dismissed the 2015 habeas petition in an effort to inappropriately delay Complainant's efforts to seek habeas relief. He contends that the Subject Judges "deliberately deceive[d] me" by reaching the conclusion, ultimately reversed by the Court

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<sup>1</sup> This is Complainant's second complaint of judicial misconduct naming Subject Judge I this year. See J.C. No. 03-16-90021. The previous complaint was dismissed as merits-related, frivolous, and unsupported by evidence that would raise an inference that misconduct has occurred.

of Appeals, that the petition was a second or successive one that could not be addressed without prior authorization of the Court of Appeals under § 2244. Complainant accuses the Subject Judges of being corrupt and unethical and of harboring a prejudice toward him.<sup>2</sup>

The thrust of Complainant’s allegations challenge Subject Judge I’s determination that his 2015 habeas petition was a second or successive petition. Such allegations 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. Merits-related allegations are beyond the scope of a judicial misconduct proceeding and are therefore 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.

Because merits-related allegations do not constitute cognizable misconduct, Complainant’s subsequent favorable decision from the Court of Appeals concluding that Subject Judge I erred in dismissing the 2015 petition does not provide evidence of judicial misconduct. Moreover, there is no evidence to substantiate Complainant’s claims Subject Judge I reached an erroneous legal conclusion intentionally due to corruption, bias,

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<sup>2</sup> Complainant also presents allegations concerning a state court magistrate judge and various other individuals involved in Complainant’s state court criminal proceeding. Such individuals are not covered by the Judicial Conduct and Disability Act; their alleged misconduct is beyond the scope of this proceeding and will not be addressed. See 28 U.S.C. §§ 351, 352(b)(1)(A)(i); Rule 4, Rules for Judicial-Conduct and Judicial-Disability Proceedings.

unethical behavior, or for any other improper reason. These claims appear to be based on nothing more than Complainant's subjective belief, which, without more, is not sufficient to give rise to an inference that misconduct has occurred. Accordingly, Complainant's remaining 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)(i), (ii), and (iii).

s/ Theodore A. McKee  
Chief Judge

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ORDER

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(Filed: September 21, 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)(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 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: September 21, 2016