

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

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J.C. Nos. 03-17-90031, 03-17-90032, 03-17-90040, 03-17-90044

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IN RE: COMPLAINTS 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 12, 2017)

PRESENT: SMITH, *Chief Judge*.

These three complaints<sup>1</sup> are 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).

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<sup>1</sup> Because two copies of the third Complaint were filed a week apart from one another, that complaint was mistakenly assigned two separate docket numbers, J.C. No. 03-17-90040 and 03-17-90044.

Complainant filed a pro se civil rights complaint pursuant to 28 U.S.C. § 1983, accompanied by a motion to proceed *in forma pauperis*. The Subject Judge granted the motion and dismissed the complaint as frivolous and for failure to state a claim and, in an abundance of caution, permitted Complainant thirty days in which to file an amended complaint. Complainant filed a response entitled “Objections and Recommendations,” which the Subject Judge construed as a motion for reconsideration and denied. Complainant did not file an amended complaint and did not appeal. The matter is closed.

In these three complaints of judicial misconduct, Complainant alleges that the Subject Judge erred in dismissing the civil rights complaint. Complainant alleges that “Complainant’s complaint clearly named all the Defendants responsible for the constitutional violations complaint of . . . and provided sufficient factual matter in a simple, concise, and direct form based in law and fact with specificity. . . .” In addition, Complainant states that he is “not sure if [the Subject Judge] had read Complainant’s complaint.” Complainant also disputes the Subject Judge’s decision to treat his “Objections and Recommendations” as a motion for reconsideration, because, according to Complainant, “it is a FACT that Complainant did not submit a ‘motion for reconsideration.’”

According to Complainant, the Subject Judge’s actions violate several Canons of the Code of Conduct for United States Judges.<sup>2</sup> Complainant claims that the Subject

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<sup>2</sup> The Code of Conduct for United States Judges is designed to provide guidance to judges, but is not a set of disciplinary rules. “Ultimately, the responsibility for determining what

Judge is “deliberately denying [him] access to the courts for redress of grievances” and contends that the Subject Judge has failed to adequately perform his duties, has failed to adhere to the standards of the judiciary, and has diminished Complainant’s confidence in the judiciary. Finally, Complainant claims that the Subject Judge “is unable to comprehend what he’s reading” and suffers from a “severe mental impairment of cognitive abilities.”

It is clear that Complainant’s allegations are largely merits-related, reflecting his fundamental disagreement with the Subject Judge’s decision to dismiss the civil rights complaint and to deny Complainant’s “Objections and Recommendations.” “An allegation that calls into question the correctness of a judge’s ruling, . . . 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 under the Judicial Conduct and Disability Act. *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*. 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

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constitutes misconduct under the statute is the province of the judicial council of the circuit subject to such review and limitations as are ordained by the statute and by these Rules.” Commentary on Rule 3, *Rules for Judicial-Conduct and Judicial-Disability Proceedings*.

F.3d 558, 561 (U.S. Jud. Conf. 2008). Accordingly, Complainant's merits-related allegations will be dismissed.

When considered apart from his merits-related allegations, Complainant's claims are entirely unsubstantiated. Complainant offers no basis for concluding that the Subject Judge suffers from a cognitive impairment, has engaged in any form of judicial misconduct, or has violated any Canon of the Code of Conduct for United States Judges. Accordingly, all 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, these complaints will be dismissed pursuant to 28 U.S.C. §§ 352(b)(1)(A)(ii) and (iii). Because Complainant filed three nearly identical complaints within a period of less than two weeks, each naming the same Subject Judge and based upon the same conduct, Complainant's attention is directed to Rule 10(a), *Rules for Judicial-Conduct and Judicial-Disability Proceedings*.<sup>3</sup> Future abuse of the judicial

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<sup>3</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.

misconduct complaint procedure may result in the imposition of restrictions under this provision.

s/ D. Brooks Smith  
Chief Judge

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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: July 12, 2017)

PRESENT: SMITH, *Chief Judge*.

On the basis of the foregoing opinion entered on this date, it is ORDERED AND ADJUDGED that the written complaints brought pursuant to 28 U.S.C. § 351 are 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/ D. Brooks Smith

Chief Judge

Dated: July 12, 2017