

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

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J.C. No. 03-17-90045

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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: August 15, 2017)

PRESENT: SMITH, *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.<sup>1</sup>

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> Complainant makes allegations concerning individuals and entities who are not covered by the Judicial Conduct and Disability Act. Accordingly, these allegations will not be addressed in this opinion. See 28 U.S.C. §§ 351, 352(b)(1)(A)(i); Rule 4, *Rules for Judicial-Conduct and Judicial-Disability Proceedings*.

Complainant alleges that the Subject Judge failed to uphold legal precedents in her civil actions and never granted a hearing. Complainant's disagreement with the Subject Judge's decisions is clearly 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*. *See also In re Memorandum of Decision of Judicial Conference Committee on Judicial Conduct and Disability*, 517 F.3d 558, 561 (U.S. Jud. Conf. 2008) (“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.”). Accordingly, these allegations are subject to dismissal.<sup>2</sup>

Complainant further alleges that the Subject Judge has a “conflict of interest” and should have recused herself because she runs a federal prisoner reentry program that allegedly receives federal funding from a source that Complainant is complaining about in her civil action. Complainant filed a recusal motion making the same argument in an underlying civil action. The Subject Judge denied the recusal motion, concluding that recusal was inappropriate on the merits. Plainly, Complainant seeks to collaterally attack

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<sup>2</sup> Complainant requests that her case be transferred to another District outside of the Third Circuit. Complainant must file any request for change of venue with the District Court.

the Subject Judge’s decision to deny her recusal motion.<sup>3</sup> Again, this is a merits-related decision that is not cognizable under the Act. 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*. In any event, there is no evidence of improper motive or judicial misconduct.

Next, Complainant alleges that the Subject Judge delayed ruling on two motions to proceed in forma pauperis. Generally, delay is not cognizable as judicial misconduct because it effectively poses a challenge to merits of official actions by the judge; *i.e.*, the decision to assign a lower priority to a particular case. *See* 28 U.S.C. § 352(b)(1)(A)(ii); Rule 11(c)(1)(B), *Rules for Judicial-Conduct and Judicial-Disability Proceedings*; Rule 3 Commentary, *Rules for Judicial-Conduct and Judicial-Disability Proceedings*.

A claim of delay may qualify as cognizable judicial misconduct if “the allegation concerns an improper motive in delaying a particular decision . . . .” Rule 3(h)(3)(B), *Rules for Judicial-Conduct and Judicial-Disability Proceedings*. Here, Complainant alleges that the Subject Judge’s delay is “socioeconomic discrimination” and an act of “retaliation for complaining about her.” Complainant provides no evidence to support her claim that any putative delay in her cases is attributable to an improper motive or

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<sup>3</sup> Notably, Complainant makes the same allegations again in a petition for writ of mandamus that is currently pending with the Court of Appeals. I express no opinion regarding Complainant’s petition for writ of mandamus.

discrimination on the part of the Subject Judge. Accordingly, to the extent they are not merits-related, Complainant's allegations of delay are dismissed as unsupported by evidence that would raise an inference that misconduct has occurred. *See* 28 U.S.C. § 352(b)(1)(A)(iii); Rule 11(c)(1)(D), *Rules for Judicial-Conduct and Judicial-Disability Proceedings*.

Based on the foregoing, the complaint will be dismissed pursuant to 28 U.S.C. §§ 352(b)(1)(A)(i), (ii), and (iii).

s/ D. Brooks Smith  
Chief Judge

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ORDER

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(Filed: August 15, 2017)

PRESENT: SMITH, *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/ D. Brooks Smith  
Chief Judge

Dated: August 15, 2017