

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

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J.C. No. 03-16-90050

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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: November 16, 2016)

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”).

This is complainant’s fourth complaint of misconduct naming the same Subject Judge. *See* J.C. Nos. 03-14-90086, 03-14-90094, 03-16-90004. For the reasons discussed below, this complaint, like the three prior complaints, 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).

In 2007, Complainant filed a civil rights complaint in which he claimed to have been physically assaulted by prison personnel. The case was assigned to the Subject Judge. After a lengthy procedural history, the case proceeded to a three-day jury trial at which Complainant appeared *pro se*.<sup>1</sup> In 2013, the jury returned a verdict in favor of the defendants and the Subject Judge entered judgment accordingly. Complainant appealed and, in June 2014, the Court of Appeals affirmed the judgment. Recently, Complainant has filed several letters in the closed district court matter seeking copies of the trial transcripts. The Subject Judge denied the requests on the ground that no case remains pending in the district court or the court of appeals, and advised Complainant to contact the court reporter about purchasing transcript copies.

In 2014, Complainant filed a new civil rights complaint alleging malicious prosecution with respect to a more recent arrest. This matter also was assigned to the Subject Judge. The Subject Judge granted Complainant leave to proceed *in forma pauperis*, dismissed some claims, determined that one claim should proceed,

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<sup>1</sup> The Subject Judge had granted Complainant *pro bono* counsel but, at Complainant's request, the representation was terminated prior to trial.

and directed that the complaint be served upon the remaining defendant.

Complainant moved for a default judgment, which the Subject Judge denied without prejudice, reasoning that, even if Complainant was able to establish proper service, Complainant did not plead facts in support of each element of a claim for malicious prosecution.

In March 2016, the Subject issued an order directing Complainant to show cause why the malicious prosecution claim should not be dismissed. Complainant filed a response. After considering the response, the Subject Judge determined that Complainant had failed to state a claim upon which relief could be granted and that amendment would be futile. Accordingly, she dismissed the claim with prejudice. Complainant moved for reconsideration, for the Subject Judge's recusal, and for the appointment of counsel. The Subject Judge denied the motions. Complainant did not appeal.

In this complaint of judicial misconduct, Complainant presents numerous allegations that the Subject Judge violated his rights in the course of presiding over his two civil rights actions. Specifically, with regard to the 2007 proceeding, Complainant disagrees with the Subject Judge's decisions concerning his ability to present evidence of an eye injury, instructions given to the jury, a direction "to remove me from courtroom like [I']m a sc[u]m bag," and the decision not to

provide free transcript copies after the case concluded. Similarly, with regard to the 2014 proceeding, Complainant disputes the denial of a default judgment, a decision not to stay the case, and the dismissal of the complaint.

These allegations are merits-related. Rule 3(h)(3)(A), *Rules for Judicial-Conduct and Judicial-Disability Proceedings* (“An allegation that calls into question the correctness of a judge’s ruling, including a failure to recuse, without more, is merits-related.”). As Complainant has been repeatedly advised, 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*.

Complainant further claims that the Subject Judge harbors a “personal vendetta” against him, is guilty of “corruption” and “conflict of interest,” is involved in a “conspiracy,” has been “playing mind games,” and has “sabotage[d]” Complainant’s cases. Complainant offers his merits-related allegations as the sole support for these claims. When considered apart from his disagreement with the merits of decisions rendered in his two cases, it is apparent that the allegations are based on no more than speculation, conjecture, and subjective belief. The record provides no evidence giving rise to a reasonable 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)(ii) and (iii). As previously noted, Complainant filed three prior judicial misconduct complaints naming the same Subject Judge, raising many of the same allegations he presents again here. Each complaint was dismissed as frivolous, merits-related, and lacking in sufficient evidence to give rise to an inference of misconduct. *See* J.C. Nos. 03-14-90086, 03-14-90094, and 03-16-90004.

In the opinion dismissing J.C. No. 03-16-90004, 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>2</sup>

s/ D. Brooks Smith  
Chief Judge

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<sup>2</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: November 16, 2016)

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)(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: November 16, 2016