

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

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J.C. No. 03-16-90071

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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: April 7, 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 Magistrate Judge (hereinafter “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 previously filed a complaint of judicial misconduct against a District Judge that was dismissed as frivolous and merits-related. J.C. No. 03-15-90007.

The primary purpose of the present complaint is challenging the Subject Judge's decisions and rulings; in particular, the denial of a hearing and the denial of a motion for judgment on the pleadings. Complainant also appears to dispute the decision to apply the "three strikes" rule to Complainant and the rejection of his contention that he is being held past his release date. Attempts to collaterally attack a Subject Judge's decisions constitute merits-related allegations. "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) (chief judge may dismiss a complaint if he or she finds that it is directly related to the merits of a decision or procedural ruling); Rule 11(c)(1)(B), Rules for Judicial-Conduct and Judicial-Disability Proceedings (a complaint must be dismissed in whole or in part to the extent that the chief judge concludes that the complaint is directly related to the merits of a decision or procedural ruling). 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 F.3d 558, 561 (U.S. Jud. Conf. 2008). Accordingly, Complainant's allegations are dismissed.

Complainant also makes allegations of delay concerning a recusal motion and a habeas petition. These allegations are dismissed as merits-related. 28 U.S.C. § 352(b)(1)(A)(ii). See also Rules 3(h)(3)(A), 3(h)(3)(B) (cognizable misconduct does not include “an allegation about delay in rendering a decision or ruling, unless the allegation concerns an improper motive in delaying a particular decision or habitual delay in a significant number of unrelated cases”), 11(c)(1)(B), Rules for Judicial-Conduct and Judicial-Disability Proceedings. In any event, the Subject Judge issued an order denying the recusal motion and a District Judge affirmed the order. To the extent Complainant suggests there was an improper motive for any putative delay, his allegations are dismissed pursuant to 28 U.S.C. § 352(b)(1)(A)(iii) as unsupported by any evidence that would raise an inference that misconduct occurred.

There is no evidence, moreover, to support Complainant’s allegations of bias, prejudice, and misconduct. These allegations are dismissed as frivolous and unsupported by any 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.

To the extent Complainant seeks to raise the same allegations that were asserted in J.C. No. 03-15-90007 in the present proceedings, his allegations are dismissed for the same reasons discussed in the memorandum opinion issued in that case. Complainant

does not provide “material information not previously considered.” Rule 11(c)(2), Rules for Judicial-Conduct and Judicial-Disability Proceedings.<sup>2</sup>

For the foregoing reasons, the complaint is dismissed pursuant to 28 U.S.C. § 352(b)(1)(A)(ii) and (iii).

s/ D. Brooks Smith  
Chief Judge

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<sup>2</sup> Complainant references another complaint filed against the Subject Judge, but the Circuit Executive’s Office has no record of this complaint.

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ORDER

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(Filed: April 7, 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)(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.

Rule 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: April 7, 2017