

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

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J.C. Nos. 03-16-90081, 03-16-90082, 03-16-90088, 03-16-90089, 03-16-90091, 03-17-90003, 03-17-90006

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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: February 23, 2017)

PRESENT: SMITH, Chief Judge.

These are complaints filed under the Judicial Conduct and Disability Act, 28 U.S.C. §§ 351-64, against two United States District Judges (hereinafter “Subject Judge I” and “Subject Judge II”) and two United States Court of Appeals Judges (“Subject Judge III” and “Subject Judge IV”). Four of the complaints (J.C. Nos. 03-16-90081, 03-16-90082, 03-17-90003, and 03-17-90006) are against Subject Judge I. For the reasons discussed below, all of the complaints 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

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<sup>1</sup> Complainant previously filed two complaints of judicial misconduct. One prior complaint named both Subject Judge II and Subject Judge III, and another named Subject Judge II again. These complaints were dismissed as frivolous and merits-related. J.C. Nos. 03-12-90019, 03-12-90020, and 03-14-90093.

business of the courts.” 28 U.S.C. § 351(a).<sup>2</sup> 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). 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).

By way of background, Complainant pleaded guilty to charges of distribution of child pornography. Although Complainant later moved to withdraw the guilty plea, Subject Judge II denied the motion and sentenced Complainant to a lengthy term of imprisonment. Complainant appealed and the Court of Appeals affirmed the judgment. Complainant filed numerous post-judgment motions, which Subject Judge II denied. Eventually, Complainant’s case was reassigned to Subject Judge I. Complainant filed many additional post-judgment motions.

Complainant alleges that Subject Judge I has “never exercised jurisdiction because this case criminally implicates [Subject Judge II] and his co-conspirators [including

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<sup>2</sup> Complainant makes allegations concerning an individual who is not subject to the Judicial Conduct and Disability Act; e.g., an Assistant United States Attorney. See 28 U.S.C. §§ 351, 352(b)(1)(A)(i); Rule 4, Rules for Judicial-Conduct and Judicial-Disability Proceedings. Accordingly, these allegations will not be addressed in this opinion.

Subject Judge III].” Complainant further alleges that Subject Judge I has “blatantly refused to execute the Third Circuit’s explicit remand . . . for 19 months because she is conspiring to cover up criminal judicial misconduct . . . .” In essence, Complainant complains about Subject Judge I’s putative delay in the resolution of multiple motions he filed in his criminal case. 28 U.S.C. § 352(b)(1)(A)(ii); 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. See also Commentary on Rule 3(h)(3)(B) (“With regard to Rule 3(h)(3)(B), a complaint of delay in a single case is excluded as merits-related. Such an allegation may be said to challenge the correctness of an official action of the judge — in other words, assigning a low priority to deciding the particular case.”).

In any event, there is no evidence to support Complainant’s allegations of misconduct regarding Subject Judge I. As Complainant recognizes in one of his most recent complaints (J.C. No. 03-17-90003), Subject Judge I has taken action in his underlying criminal case and filed an order addressing Complainant’s many post judgment motions.<sup>3</sup> Although Complainant strongly disagrees with Subject Judge I’s order and characterizes it as vindictive and retaliatory, neither the record nor the order itself provide any evidence of judicial misconduct. Moreover, as discussed in the order, Complainant

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<sup>3</sup> Subject Judge I’s order resolved over twenty motions filed by Complainant.

was informed that his criminal case is closed and that the relief he seeks is “more appropriately sought in a separate civil action . . . .” Complainant has “since filed an action under 28 U.S.C. § 2255.”<sup>4</sup> Accordingly, Complainant’s allegations of judicial misconduct concerning Subject Judge I 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 that Complainant seeks to collaterally attack Subject Judge I’s order dismissing his motions in the present administrative proceedings – including Subject Judge I’s denial of his recusal motions – his complaint is dismissed as merits-related. 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 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 (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).

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<sup>4</sup> Complainant’s action under 28 U.S.C. § 2255 was administratively terminated because Complainant failed to use the requisite form. Complainant recently filed a letter requesting that his case be reopened and attaching a form.

With respect to Subject Judge II, Complainant alleges that Subject Judge II was removed from his criminal case for “fraud and felony obstruction of justice.” Complainant also appears to complain about Subject Judge II’s putative failure to take action regarding alleged “docket manipulation.” There is no evidence to support Complainant’s allegations of judicial misconduct. Indeed, on appeal, Complainant sought review of an order denying his motion to recuse Subject Judge II that raised similar allegations. A Third Circuit panel affirmed the denial of the recusal motion because Complainant had not established that Subject Judge II was biased. The panel’s order further stated that Complainant’s remaining allegations consisted of “unsupported claims of judicial misconduct and wholly inappropriate remarks.” Complainant’s 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.

In addition, Complainant alleges that Subject Judge III engaged in “criminal judicial misconduct” because she conspired with an Assistant United States Attorney to “fraudulently manipulate” the district docket. Again, there is no evidence to support Complainant’s allegations of judicial misconduct and they 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.

Finally, Complainant alleges that Subject Judge IV has failed to take action on an emergency motion for change of venue that Complainant filed in the District Court. Even assuming *arguendo* that Subject Judge IV has jurisdiction over a motion filed in District Court, as discussed above, allegations of delay are subject to dismissal as merits-related. 28 U.S.C. § 352(b)(1)(A)(ii); Rules 3(h)(3)(A), 3(h)(3)(B), 11(c)(1)(B), Rules for Judicial-Conduct and Judicial-Disability Proceedings.

To the extent Complainant contends that Subject Judge IV has an improper motive for his putative delay, his allegations are likewise subject to dismissal. Complainant alleges that Subject Judge IV's failure to take action is part of a conspiracy to cover up criminal actions by Subject Judge II and Subject Judge III. Again, Complainant provides no evidence for his baseless allegations. Complainant's 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.

Finally, 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 any further complaints under the Judicial Conduct and Disability Act. See Rule 10(a), Rules for Judicial-Conduct and Judicial-Disability Proceedings.<sup>5</sup> As noted above, Complainant has already filed several complaints under

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<sup>5</sup> Rule 10(a) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings provides as follows:

the Act that were dismissed as merits-related and frivolous. See J.C. Nos. 03-12-90019, 03-12-90020, and 03-14-90093. Complainant was previously warned that future abuse of the complaint procedure could result in the imposition of sanctions under Rule 10(a), Rules for Judicial-Conduct and Judicial-Disability Proceedings. Nonetheless, Complainant proceeded to file seven additional frivolous and merits-related complaints. Upon transmittal of this memorandum opinion, the Judicial Council will make a decision about whether Complainant's present and prior abuse of the complaint procedure merits taking action under Rule 10(a) to prohibit complainant's future use of the complaint procedure.

For the foregoing reasons, the complaint is 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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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: February 23, 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 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.



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: February 23, 2017