

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

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J.C. No. 03-17-90008

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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 24, 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.

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).

Complainant was indicted on charges of mail fraud, wire fraud, and related crimes. His criminal proceeding was assigned to the Subject Judge. Although counsel was appointed, Complainant moved to proceed pro se. The Subject Judge granted the request

appointed standby counsel. Complainant proceeded to file numerous pro se motions during the course of the criminal proceeding, including several motions to dismiss the indictment and for the Subject Judge's recusal. He also filed two petitions for a writ of mandamus in the Court of Appeals, seeking a more expeditious resolution of his motions, the dismissal of the criminal proceeding, and the Subject Judge's arrest. The motions and petitions were all denied.

After a trial, the jury returned a guilty verdict on nineteen counts. Complainant discharged standby counsel and the Subject Judge appointed new counsel for sentencing. After a hearing, the Subject Judge sentenced Complainant to 54 months' imprisonment and entered judgment accordingly. Complainant appealed, and the Court of Appeals affirmed the judgment.

Complainant then filed a motion under 28 U.S.C. § 2255 to set aside, vacate, or correct his sentence, as well as a number of motions aimed to obtain his immediate release and the Subject Judge's recusal. The motions for release and recusal have been denied; the § 2255 motion remains pending. Because there was a question as to whether Complainant would amend the § 2255 motion or proceed on the original filing, the Subject Judge has not yet directed the government to file a response to the § 2255 motion.

In this complaint of judicial misconduct, Complainant alleges that the Subject Judge "has broken nearly every rule and code of ethics of judges." Specifically, Complainant contends that the Subject Judge "ignored the law" by denying his motions to dismiss his criminal proceeding, by declining to recuse from his case, and by failing to

grant his § 2255 motion as unopposed. Complainant further alleges that he “is illegally detained and should be released and declared innocent as a matter of law immediately” and, because the Subject Judge has not granted this relief, she has violated Complainant’s constitutional rights, several federal statutes, and the Code of Conduct for United States Judges.

Complainant has previously presented all of these allegations to the Subject Judge in his criminal proceeding and to the Court of Appeals in his petitions for a writ of mandamus. Complainant repeatedly has received unfavorable rulings on the merits of these claims. His attempts to challenge those rulings in this administrative proceeding are clearly merits-related. “An allegation that calls into question the correctness of a judge’s ruling, including a failure to recuse, 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*.

Indeed, Complainant’s 48-page pro se § 2255 motion is currently pending before the Subject Judge, and it once again presents many of the same arguments concerning the District Court’s jurisdiction over Complainant’s criminal proceeding. 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). These merits-related allegations will therefore be dismissed.

When considered apart from the merits-related allegations, it is apparent that Complainant has offered no evidence to substantiate his claims of illegal and unethical behavior on the part of the Subject Judge. The record provides no support for a claim of judicial misconduct. Accordingly, any 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, this complaint will be dismissed pursuant to 28 U.S.C. §§ 352(b)(1)(A)(ii) and (iii).

s/ D. Brooks Smith  
Chief Judge

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ORDER

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(Filed: April 24, 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.

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 24, 2017