

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

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J.C. No. 03-17-90017

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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: June 8, 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 (hereinafter “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). 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).

Complainant alleges that the Subject Judge engaged in judicial misconduct because "he has a habit of not deciding motions [he] files." The record has been reviewed and there is no evidence of judicial misconduct. Complainant filed a number of motions pro se while he was still represented by counsel and during the pendency of his direct appeal. The Subject Judge dismissed many of these motions without prejudice to re-file should his "counsel so decide." The Subject Judge dismissed Complainant's other motions for lack of jurisdiction in view of the pendency of the direct appeal. Accordingly, this allegation is 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*.

Complainant further complains about the Subject Judge's alleged habitual delay in deciding his motions. As a general matter, allegations of delay are subject to dismissal 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.

Complainant, moreover, does not make an allegation of habitual delay in “a significant number of unrelated cases”, nor does he provide any evidence of improper motive.

In any event, the docket has been reviewed and there is no evidence of judicial misconduct. As discussed above, Complainant filed multiple motions pro se during the pendency of his direct appeal while he was still represented by counsel. Complainant also sought an extension of time to file a brief in support of a petition filed under Section 2255. This extension of time was granted and then Complainant proceeded to file additional motions, including a motion seeking an “indefinite extension” of time to file a reply and a pro se motion to amend his Section 2255 motion.<sup>1</sup> Accordingly, Complainant’s allegations of habitual delay 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 suggests there was an improper motive for any putative delay, his allegations are also dismissed. *Id.*

Complainant further complains that the Subject Judge attributed statements to him that he “never stated” and refused to seal documents discussing statements made by Complainant where he acknowledged cooperating with the Government. Complainant

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<sup>1</sup> At the conclusion of his direct appeal, Complainant proceeded pro se with the filing of a motion for relief under Section 2255. After Complainant proceeded pro se for some time, the Subject Judge assigned the Community Defender’s Office to represent Complainant approximately one year ago for purposes of litigating his motion under 2255 seeking relief under *Johnson v. United States*.

contends that keeping these statements public has caused him to be assaulted in prison. In essence, Complainant seeks to collaterally attack the Subject Judge's decisions in the underlying proceedings denying his motions to seal. Thus, his allegations are 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 . . . 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). The present administrative proceedings are not the appropriate forum to collaterally attack the merits of the Subject Judge’s decisions. Moreover, Complainant’s allegations about specific attacks resulting from public disclosure are not appropriately raised in this administrative proceeding. Such allegations are properly raised in the District Court.<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> I express no opinion of the merits of any such claim.

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ORDER

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(Filed: June 8, 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: June 8, 2017