

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

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J.C. No. 03-18-90087

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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 13, 2018)

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 is a defendant in a criminal proceeding which is pending before the Subject Judge. Complainant is charged with three armed bank robberies. In addition to

the present complaint, Complainant has also filed a pro se interlocutory appeal of the Subject Judge's order denying Complainant's motion for the Subject Judge's disqualification.<sup>1</sup>

As a preliminary matter, Complainant makes allegations regarding individuals who are not subject to the Judicial Conduct and Disability Act, including witnesses, FBI agents, U.S. Marshals, and members of a police department. These allegations will not be addressed in this opinion. *See* 28 U.S.C. §§ 351, 352(b)(1)(A)(i); Rule 4, *Rules for Judicial-Conduct and Judicial-Disability Proceedings*.

Complainant alleges that the Subject Judge refuses to “perform his duties of Office fairly, impartially and to show respect for the law . . . .” Complainant goes on to express his disagreement with the Subject Judge's findings and rulings in his on-going criminal matter. Indeed, Complainant repeats many of the same allegations that he also made in his unsuccessful pro se motion seeking the Subject Judge's disqualification. These allegations are all 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

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<sup>1</sup> This appeal remains pending and I express no opinion as to the merits of Complainant's appeal in the present administrative proceeding.

3(h)(3)(A), 11(c)(1)(B), *Rules for Judicial-Conduct and Judicial-Disability Proceedings*.

Accordingly, these allegations are subject to dismissal.<sup>2</sup>

Complainant further alleges that the Subject Judge is not impartial, is prejudiced against him, and acts like he is part of a conspiracy against him. Complainant's only support for these allegations, however, is his disagreement with the Subject Judge's decisions. As discussed above, such merits-related allegations are not cognizable under the Act. In any event, Complainant's complaint and the hundreds of pages of exhibits attached thereto have been reviewed and they do not provide any evidence of judicial misconduct. Complainant's 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)(i), (ii), and (iii).

s/ D. Brooks Smith  
Chief Judge

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<sup>2</sup> Allegations seeking review of the Subject Judge's decisions should be made in the course of a properly filed appeal and not administrative proceedings under the Judicial Conduct and Disability Act.

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ORDER

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(Filed: June 13, 2018)

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)(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.

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 13, 2018