

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. Nos. 03-18-90100, 03-18-90101, 03-18-90102, 03-18-90103, 03-18-90104, 03-18-90105, 03-18-90106, 03-18-90107, 03-18-90108, 03-18-90109, 03-18-90110, 03-18-90111, 03-18-90112, 03-18-90113, 03-18-90114, 03-18-90115, 03-18-90116, 03-18-90117, 03-18-90118, 03-18-90119, 03-18-90120, 03-18-90121, 03-18-90122, 03-18-90123, 03-18-90124, 03-18-90125, 03-18-90126, 03-18-90127, 03-18-90128, 03-18-90129, 03-18-90130, 03-18-90131, 03-18-90132, 03-18-90133, 03-18-90134, 03-18-90135, 03-18-90136, 03-18-90137, 03-18-90138

IN RE: COMPLAINT OF JUDICIAL MISCONDUCT
OR DISABILITY

ORIGINAL PROCEEDINGS UNDER 28 U.S.C. § 351

MEMORANDUM OPINION

(Filed: June 22, 2018)

PRESENT: SMITH, *Chief Judge*.

This is a complaint filed under the Judicial Conduct and Disability Act, 28 U.S.C. §§ 351-64, against twenty-nine United States District Judges¹ (“Subject Judge I” through “Subject Judge XXIX”) and ten United States Magistrate Judges (“Subject Judge XXX” through “Subject Judge XXXIX”).² For the reasons discussed below, the complaint will be dismissed.

¹ One of the named District Judges has since been elevated to the Court of Appeals.

² Complainant also named one retired District Judge and four deceased District Judges. The complaint was not accepted for filing as to those Judges. *See* Rule 8(c), *Rules for*

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, a state prisoner, is a frequent pro se litigant in federal court. Due to his numerous and repetitive court filings, he is subject to the PLRA’s “three strikes rule” as well as at least one anti-filing injunction. One theme that has permeated Complainant’s court submissions over the years is his suspicion that a now-deceased United States Senator conspired with a wealthy philanthropist and others to appoint and control federal judges within this Circuit.

Consistent with this theme, this complaint of judicial misconduct reads, in its entirety: “More than 30 years ago, [the wealthy philanthropist] and former (late) U.S. Senator and others conspired to alter the way federal judges in U.S. District Courts are seated – in a way that made federal judges appointed by a U.S. Senator(s) indebted to and controlled by [the philanthropist] and [the Senator]. Even with Senate approval, it was insufficient to over-ride constitutional commands (U.S. Constitution Amendments and

Judicial-Conduct and Judicial-Disability Proceedings (circuit clerk must not accept a complaint against a non-covered person). Accordingly, allegations concerning any retired or deceased District Judge will not be considered in this opinion

Article II, III.) Specific directions for amendment of that [*sic*] Constitution, and depriving citizens of their constitutional right to elect federal District Judges. The [named Subject Judges] are counterfeit and invalidly appointed, and must be suspended and removed.”

Complainant’s allegations to this effect have been repeatedly rejected by the courts. Any efforts to collaterally challenge those rulings are merits-related, and therefore are not cognizable as judicial misconduct. *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*. Moreover, the allegations of this complaint are so facially incredible and lacking in indicia of reliability that further inquiry is unnecessary. *See* Commentary on Rule 11, *Rules for Judicial-Conduct and Judicial-Disability Proceedings*. Complainant’s allegations are therefore subject to dismissal as patently frivolous and unsupported. 28 U.S.C. § 352(b)(1)(A)(iii); Rule 11(c)(1)(B), (C),(D), *Rules for Judicial-Conduct and Judicial-Disability Proceedings*. Accordingly, this complaint will be dismissed pursuant to 28 U.S.C. §§ 352(b)(1)(A)(i), (ii), and (iii).

In the past, Complainant filed three complaints of judicial misconduct. *See* J.C. Nos. 03-10-90098, 03-12-90049, 03-13-90041. Complainant’s prior complaints were dismissed as non-cognizable, frivolous, and unsupported. In the opinions dismissing both J.C. No. 03-12-90049 and J.C. No. 03-13-90041, Complainant was warned that future abuse of the judicial misconduct complaint procedure could result in the imposition of filing restrictions under Rule 10, *Rules for Judicial-Conduct and Judicial-Disability*

Proceedings. Complainant nonetheless filed the most recent complaint, which is merits-related, frivolous, and unsupported. Accordingly, 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 further complaints under the Judicial Conduct and Disability Act. *See* Rule 10(a), *Rules for Judicial-Conduct and Judicial-Disability Proceedings*.³

s/ D. Brooks Smith
Chief Judge

³ Rule 10(a) of the *Rules of Judicial-Conduct and Judicial-Disability Proceedings* provides:

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

(Filed: June 22, 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.

s/ D. Brooks Smith
Chief Judge

Dated: June 22, 2018