

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

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J.C. No. 03-18-90177

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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: October 2, 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 was the defendant in a civil action filed by a bank against him and various entities he owned alleging violations of the federal Racketeer Influenced and

Corrupt Organizations Act (RICO), as well as fraud, breach of contract, and other claims. The present complaint alleges that the Subject Judge who presided over that case ignored evidence, should not have granted summary judgment, “continually” approved payments to the receiver, gave Complainant a short response time, denied oral argument, and decided certain pending motions on the papers, among other rulings. It is clear that Complainant seeks to collaterally attack the Subject Judge’s decisions and procedural rulings. Merits-related allegations do not, however, 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*. Accordingly, Complainant’s merits-related allegations are subject to dismissal.<sup>1</sup>

Complainant also makes an allegation of delay and contends that the Subject Judge “sat” on a complaint he filed in another civil action “for almost a year” before dismissing it. These allegations are also 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*.

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<sup>1</sup> Notably, Complainant appealed the Subject Judge’s decision granting plaintiff’s motion for summary judgment and awarding more than ten million dollars in damages in the underlying civil suit. A panel of Third Circuit judges affirmed.

In any event, the record has been reviewed and there is no evidence of judicial misconduct. Other than Complainant's disagreement with the Subject Judge's decisions, there is no evidence that the Subject Judge was motivated by a need to "save face and justify his ill-advised and questionable decision" or any other improper motive. Moreover, there is no evidence of any improper motive for the Subject Judge's putative delay. Accordingly, the complaint is 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*.<sup>2</sup>

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> To the extent Complainant seeks to complain about the actions of District Court Clerk's Office employees regarding the filing of a voluminous binder of documents, these allegations will not be addressed in this opinion because only judges are covered by the Judicial Conduct and Disability Act. See 28 U.S.C. §§ 351, 352(b)(1)(A)(i); Rule 4, *Rules for Judicial-Conduct and Judicial-Disability Proceedings*.

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ORDER

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(Filed: October 2, 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: October 2, 2018