

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

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J.C. Nos. 03-18-90207, 03-18-90208, 03-19-90209

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IN RE: COMPLAINTS 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: January 24, 2019)

PRESENT: SMITH, *Chief Judge*.

These complaints are filed under the Judicial Conduct and Disability Act, 28 U.S.C. §§ 351-64, against a United States District Judge (“Subject Judge I”) and a United States Magistrate Judge (“Subject Judge II”). For the reasons discussed below, the complaints 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, a frequent pro se plaintiff, has filed three complaints of judicial misconduct. In the first complaint, Complainant alleges that Subject Judge I erred by

dismissing one of Complainant's civil actions with prejudice.<sup>1</sup> The second and third complaints both name Subject Judge II and concern a pending civil RICO action. Among other things, Complainant disagrees with an order in which Subject Judge II indicated that the complaint will be screened pursuant to 28 U.S.C. § 1915(e).

In these complaints, Complainant alleges that Subject Judges I and II did not comply with "the Law of this Case," "ignored the common law," "exceeded [their] jurisdiction," and "ignored [their] fiduciary duty to [Complainant]." In addition, Complainant alleges that Subject Judge II is "not honest," violated Complainant's "right to a speedy trial" and "refused to allow another Judge to administer the case despite [Complainant's] Objections and wishes in the court of record." Complainant argues that Subject Judges I and II are not entitled to absolute judicial immunity and requests that they both retire.<sup>2</sup>

In large part, these complaints challenge rulings rendered by the Subject Judges, including the dismissal order by Subject Judge I and the screening order by Subject Judge II. Such allegations are merits-related. Rule 3(h)(3)(A), *Rules for Judicial-Conduct and Judicial-Disability Proceedings* ("An allegation that calls into question the correctness of a judge's ruling, including a failure to recuse, without more, is merits-related."). Merits-related allegations do not constitute cognizable misconduct under the

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<sup>1</sup> On the cover sheet of the complaint, Complainant provides a docket number for a case in which Subject Judge I did not participate.

<sup>2</sup> In addition, as an appendix to the first and second complaints, Complainant provides a ten-page discussion of "law of the case" that does not contain any particularized allegations concerning Subject Judges I or II.

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*.

Complainant's merits-related allegations therefore will be dismissed.

Complainant's remaining allegations are entirely baseless. Complainant offers no evidence to substantiate his belief that the Subject Judges have engaged in judicial misconduct, and the records in Complainant's proceedings lend no support to a conclusion that judicial misconduct has occurred. Accordingly, Complainant's 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*.

These complaints therefore will be dismissed pursuant to 28 U.S.C. § 352(b)(1)(A)(ii) and (iii). Within a period of only four months, Complainant has filed eight judicial misconduct complaints naming five federal judges. All eight complaints have been dismissed as merits-related, unsupported, and frivolous. *See* J.C. Nos. 03-18-90175, 03-18-90178, 03-18-90191, 03-18-90192, 03-18-90202, 03-18-90207, 03-18-90208, 03-18-90209. In the opinion dismissing J.C. Nos. 03-18-90191, 03-18-90192, and 03-18-90202, Complainant was warned that continued 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 three current complaints, which are once again 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*.<sup>3</sup>

s/ D. Brooks Smith  
Chief Judge

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<sup>3</sup> 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

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(Filed: January 24, 2019)

PRESENT: SMITH, *Chief Judge*.

On the basis of the foregoing opinion entered on this date, it is ORDERED AND ADJUDGED that the written complaints brought pursuant to 28 U.S.C. § 351 are 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: January 24, 2019