

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

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J.C. No. 03-18-90217

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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: January 23, 2019)

PRESENT: SMITH, *Chief Judge*.

This complaint is filed under the Judicial Conduct and Disability Act, 28 U.S.C. §§ 351-64, against a United States District Judge (the “Subject Judge”).<sup>1</sup> 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).

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<sup>1</sup> To the extent Complainant’s allegations concern actions by individuals who are not covered by the Judicial Conduct and Disability Act, including past attorneys and government officials, the 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 is a state prisoner who filed a petition for a writ of habeas corpus. The District Court initially dismissed the petition for lack of subject matter jurisdiction as a second or successive petition not authorized by the Court of Appeals under 28 U.S.C. § 2244. Complainant then filed a motion in the Court of Appeals under § 2244. The Court of Appeals determined that, because the prior petition had been dismissed without prejudice, the second petition was not “second or successive” for purposes of § 2244 and Complainant therefore did not require authorization to file it. The Court of Appeals then transferred the petition back to the District Court.<sup>2</sup> The matter was reopened and Complainant was appointed counsel by the Magistrate Judge assigned to the matter. Ultimately, the Subject Judge issued an order granting Complainant’s petition for writ of habeas corpus. The Subject Judge ordered that Complainant be released within 90 days of the date of the order unless Complainant’s direct appeal rights were reinstated.

Complainant alleges that the Subject Judge “refuses to impose his jurisdiction on this already clear miscarriage of justice.” Although unclear, it appears that Complainant is complaining that he remains incarcerated even though his habeas petition was granted by the Subject Judge. By the terms of the Subject Judge’s order, however, Complainant would only be released if his direct appeal rights were not reinstated within 90 days of the date of the Subject Judge’s order. Complainant does not state whether or not his appeal

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<sup>2</sup> Complainant filed a complaint regarding the Subject Judge’s prior decisions in J.C. Nos. 03-16-90021 and 03-16-90044. These prior complaints were dismissed as frivolous and merits-related. Complainant also named a magistrate judge in his complaints and those allegations were dismissed on the same grounds. *See* J.C. No. 03-16-90045.



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ORDER

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(Filed: January 23, 2019)

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: January 23, 2019