

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

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J.C. No. 03-18-90218

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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: February 11, 2019)

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 filed a pro se civil complaint against eleven defendants. After being transferred from a different district, the matter was assigned to the Subject Judge. Nine of the defendants moved to dismiss the complaint arguing, among other things, that

Complainant had failed to effectuate proper service. The Subject Judge granted the motions and dismissed the complaint with prejudice as to all eleven defendants, concluding that proper service had not been effectuated. The Subject Judge also denied Complainant's motion for a default judgment.

Complainant moved for reconsideration of the dismissal. In the motion, Complainant argued that the Subject Judge made a "false statement" in his opinion by stating that "all" defendants had moved to dismiss, when two defendants never responded to the complaint. The Subject Judge denied reconsideration, observing that "the documents in this case make it clear that none of the defendants were properly served."

In this complaint of judicial misconduct, Complainant disputes the Subject Judge's decisions to dismiss the complaint and to deny reconsideration. Complainant reiterates his allegation that the Subject Judge made a "[f]alse statement in the ruling." In addition, Complainant alleges that the order denying reconsideration "is addressed the same way the lawyer for defendant . . . addressed [Complainant]'s mail in this case" and reflects "a postmark and a postage meter mark from the wrong zip code." Complainant surmises that "[t]his implies improper contact with a defendant or lawyer."

Complainant's allegations reflecting his disagreement with the Subject Judge's decisions to dismiss the complaint and to deny reconsideration are clearly merits-related. "An allegation that calls into question the correctness of a judge's ruling, . . . 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 3(h)(3)(A), 11(c)(1)(B), *Rules for Judicial-Conduct and Judicial-Disability Proceedings*. Accordingly, Complainant's merits-related allegations will be dismissed.

Complainant's remaining allegations do not give rise to an inference of judicial misconduct. Even accepting Complainant's allegations concerning the postmark, zip code, and address, these allegations do not support an inference that the Subject Judge had improper *ex parte* contact with opposing counsel or a party. Court documents are not typically mailed by judges, because staff in the District Court Clerk's Office has responsibility for mailing court documents.<sup>1</sup> Complainant provides no evidence to substantiate his suspicion that the Subject Judge was involved in the mailing of the court documents at issue here. Because such allegations are unsubstantiated, they 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).

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<sup>1</sup> To the extent Complainant's allegations imply misconduct on the part of Clerk's Office staff, such allegations will not be considered in this opinion. Court staff are not federal judges and therefore are not subject to 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*

s/ D. Brooks Smith

Chief Judge

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ORDER

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(Filed: February 11, 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: February 11, 2019