

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

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J.C. No. 03-19-90006

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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 21, 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 Magistrate Judge (hereinafter 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, such as attorneys, clerk’s office staff, and prison staff, 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 alleges that the Subject Judge, government attorneys, and clerk of court have been “sabotaging court proceedings” to “cover-up” for the misconduct of prison staff. In support of this contention, Complainant raises a number of disputes with the Subject Judge’s decisions and actions, such as permitting the Assistant United States Attorney to file certain documents and denying Complainant’s motions, including a recusal motion. Complainant further disagrees with the grant of an extension of time for defendants. Complainant’s disagreements with the Subject Judge’s decisions and rulings are merits-related, and are therefore not cognizable in this proceeding. *See* 28 U.S.C. § 352(b)(1)(A)(ii); Rules 3(h)(3)(A) (“An allegation that calls into question the correctness of a judge’s ruling, including a failure to recuse, without more, is merits-related.”), 11(c)(1)(B), *Rules for Judicial-Conduct and Judicial-Disability Proceedings*. The “misconduct procedure [under the Act] is not designed as a substitute for, or supplement to, appeals or motions for reconsideration. Nor is it designed to provide an avenue for collateral attacks or other challenges to judges’ rulings.” *In re Memorandum of Decision of Judicial Conference Committee on Judicial Conduct and Disability*, 517 F.3d 558, 561 (U.S. Jud. Conf. 2008). Accordingly, all such claims are dismissed.

To the extent Complainant alleges that the Subject Judge’s decisions support Complainant’s claims of a judicial “cover-up,” Complainant’s allegations are likewise subject to dismissal. The record has been reviewed and there is no evidence of any judicial misconduct on the part of the Subject Judge. Specifically, Complainant’s allegations regarding the Subject Judge’s alteration of documents 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*.

For all of the foregoing reasons, the complaint is 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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ORDER

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(Filed: February 21, 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 21, 2019