

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

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J.C. No. 03-19-90071

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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 14, 2020)

PRESENT: MCKEE, *Circuit Judge*.

This complaint is filed under the Judicial Conduct and Disability Act, 28 U.S.C. §§ 351-64, against a United States Court of Appeals 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's allegations contest the Subject Judge's procedural actions. Specifically, Complainant appears to allege that the Subject Judge "misconstrued" his complaints and mailed a copy of Complainant's prior complaints of judicial misconduct to a district court clerk for docketing, instead of transmitting them to the Circuit Executive's Office for docketing. Complainant further alleges that the Subject Judge should not have ruled upon his prior complaint of judicial misconduct because he was named as one of the Subject Judges. Merits-related allegations do not constitute cognizable misconduct under the Judicial Conduct and Disability Act. Rule 4(b)(1), *Rules for Judicial-Conduct and Judicial-Disability Proceedings* ("Cognizable misconduct does not include an allegation that calls into question the correctness of a judge's ruling, including a failure to recuse."). Accordingly, Complainant's merits-related allegations will be dismissed. *See* 28 U.S.C. § 352(b)(1)(A)(ii); Rules 4(b)(1), 11(c)(1)(B), *Rules for Judicial-Conduct and Judicial-Disability Proceedings*.

In any event, the records of Complainant's prior complaints of judicial misconduct (J.C. Nos. 03-19-90048, 03-19-90049, 03-19-90050) have been reviewed and there is no evidence of judicial misconduct of any kind. Indeed, as he was previously advised, Complainant is mistaken that he named the Subject Judge as a Subject Judge in the prior matters. Furthermore, the Judicial Council already reviewed and rejected this argument, which Complainant raised in his unsuccessful petition for review filed in J.C. Nos. 03-19-90048, 03-19-90049, 03-19-90050. Complainant's allegations are therefore also 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>1</sup>

Finally, Complainant alleges that the Subject Judge is biased against him and engaged in collusion and complicity. The record provides no support for these allegations. Accordingly, Complainant's remaining allegations are likewise 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*. Given the frivolous and merits-related nature of Complainant's current and prior allegations, his attention is directed to Rule 10(a), *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)(ii) and (iii).

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<sup>1</sup> To the extent Complainant seeks to raise the same frivolous and merits-related allegations that he made in these prior proceedings regarding other judges, his allegations are dismissed again on the same grounds.

<sup>2</sup> Rule 10(a), *Rules for Judicial-Conduct and Judicial-Disability Proceedings*, states:

(a) **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.

s/ Theodore A. McKee  

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Circuit Judge

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ORDER

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(Filed: February 14, 2020)

PRESENT: MCKEE, *Circuit 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)(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/ Theodore A. McKee  
Circuit Judge

Dated: February 14, 2020