

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

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J.C. No. 03-19-90077

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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: March 6, 2020)

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”). 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, a defendant in a criminal proceeding before a Magistrate Judge,<sup>1</sup> received a sentence including a fine. Complainant appealed the judgment, and the appeal was assigned to the Subject Judge. Complainant's assigned counsel viewed the appeal as meritless and therefore sought leave to withdraw the representation. After a hearing, the Subject Judge *sua sponte* determined that the record did not adequately demonstrate that the Magistrate Judge had considered Complainant's income, earning capacity, and financial resources prior to imposing the fine. The Subject Judge therefore vacated the sentence, remanded the matter to the Magistrate Judge for further proceedings, and affirmed the judgment in all other respects. After consulting with defense counsel, the Subject Judge also determined that the counsel appointment should continue on remand.

This complaint of judicial misconduct was filed shortly before the Subject Judge's resolution of Complainant's appeal. In it, Complainant alleges that the Subject Judge "did not take [him] seriously" during the hearing because the Subject Judge declined to permit Complainant to testify and present evidence concerning his deteriorating relationship with his appointed counsel, and also because the Subject Judge did not consider evidence concerning Complainant's ability to pay a fine. Complainant also claims that he "is being discriminated & racial profiled" and seeks the Subject Judge's recusal.

It is apparent that Complainant disputes the merits of rulings that the Subject Judge rendered during the hearing, including the decision that appointed counsel should continue to represent Complainant and the decision to have Complainant's counsel present

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<sup>1</sup> The Magistrate Judge is not a named Subject Judge of this complaint of judicial misconduct.

argument rather than permit Complainant to represent himself or present evidence during the hearing. Allegations disputing the merits of judicial rulings do not constitute cognizable misconduct under the Judicial Conduct and Disability Act. “Cognizable misconduct does not include an allegation that calls into question the correctness of a judge’s ruling, including a failure to recuse.” Rule 4(b)(1), *Rules for Judicial-Conduct and Judicial-Disability Proceedings*. Merits-related allegations are not cognizable as misconduct because 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 non-cognizable allegations are subject to dismissal.<sup>2</sup> *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*.

To the extent Complainant’s allegations are not based solely on his disagreement with the merits of the Subject Judge’s rulings, they are entirely unsubstantiated. Complainant provides no evidence of discrimination or racial profiling, and the record reveals no evidence whatsoever to support such claims. Complainant’s remaining allegations are therefore subject to dismissal as frivolous and unsupported by evidence

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<sup>2</sup> Complainant’s counsel did not move for the Subject Judge’s recusal. A recusal motion must be presented to the presiding judge in the first instance. And, as already noted, a substantive decision rendered on such a motion is merits-related and does not, without more, constitute cognizable misconduct. *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*.

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)(ii) and (iii). Complainant previously filed two complaints of judicial misconduct against two other federal judges, which also were dismissed as merits-related, unsupported, and frivolous. *See* J.C. Nos. 03-19-90018 and 03-19-90058. Complainant's attention is therefore directed to Rule 10(a), *Rules for Judicial-Conduct and Judicial-Disability Proceedings*.<sup>3</sup> Future abuse of the judicial misconduct complaint procedure may result in the imposition of restrictions pursuant to this provision.

s/ D. Brooks Smith  
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Chief Judge

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<sup>3</sup> Rule 10(a) of the *Rules for 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: March 6, 2020)

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)(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: March 6, 2020