

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

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J.C. Nos. 03-20-90001, 03-20-90002, 03-20-90003

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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 31, 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 (“Subject Judge I”) and two United States Circuit Judges (“Subject Judge II” and “Subject Judge III”). 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).

In 2016, Complainant filed two pro se civil rights complaints. The matters were assigned to Subject Judge I. Subject Judge I dismissed both complaints. On appeal, two

separate panels of the Court of Appeals affirmed the judgments.<sup>1</sup> Recently, in one of the District Court proceedings, Complainant filed a series of post-judgment motions, which Subject Judge I denied. Complainant appealed the denial of the post-judgment motions. A panel comprised of Subject Judges II and III and a third Circuit Judge<sup>2</sup> affirmed.

In this complaint of judicial misconduct, Complainant alleges that the three Subject Judges should have recused themselves for various reasons. Notably, however, Complainant did not move for recusal. A recusal motion must be presented to the appropriate judge in the first instance. A substantive decision rendered on such a motion is merits-related and therefore 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*.

Complainant alleges conclusorily that Subject Judge I has a “clear bias” and an “appearance of []partiality.” In support of this claim, Complainant alleges only that “[t]he documentation and evidence of Record stands as fact.” A review of the record reveals no basis for a conclusion that Subject Judge I is biased or has an appearance of partiality. Accordingly, these allegations 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*.

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<sup>1</sup> None of the panel members are named as Subject Judges of this complaint.

<sup>2</sup> The third panel member is not named as a Subject Judge of this complaint.

Next, Complainant alleges that Subject Judge II “has a personal conflict of interest” based on current and former marriages. Neither Subject Judge II’s current spouse or former spouse is a defendant in Complainant’s proceeding. Nonetheless, Complainant hypothesizes that Subject Judge II could not act impartially in Complainant’s appeal because an adverse decision in that matter “will result in detrimental damage to the financial well-being of the [entity]” for which the former spouse worked. In addition, Complainant speculates that Subject Judge II must have a “personal relationship with” Subject Judge I because Subject Judge I worked with Subject Judge II’s former spouse. Complainant further theorizes that Subject Judge II “has financial holdings which will absolutely be affected when the facts of [Complainant’s] case become public.” Complainant offers no evidence whatsoever to substantiate any of these speculative and implausible allegations. The allegations therefore will be dismissed. 28 U.S.C. § 352(b)(1)(A)(iii); Rule 11(c)(1)(D), *Rules for Judicial-Conduct and Judicial-Disability Proceedings*.

Next, Complainant alleges that Subject Judge III’s “former law partner” is “personally involved” in Complainant’s case, giving rise to an “appearance of bias.” The record shows, however, that the alleged “former law partner” is not involved in Complainant’s case. This allegation is specious and therefore subject to dismissal. 28 U.S.C. § 352(b)(1)(A)(iii); Rule 11(c)(1)(C), *Rules for Judicial-Conduct and Judicial-Disability Proceedings*.

Finally, Complainant alleges that Subject Judge I and Subject Judge III were appointed by the same president and this “in itself is a disqualifying factor.” Specifically, Complainant believes that Subject Judge III ruled against him in order to prevent Complainant from bringing “disgrace and disrepute upon [Subject Judge I]” by proceeding with his case. To the extent these allegations are not based solely on Complainant’s disagreement with the merits of the Subject Judge III’s ruling in Complainant’s appeal,<sup>3</sup> they are entirely unsubstantiated. Appointment by the same president does not, without more, give rise to a reasonable inference that Subject Judge III cannot impartially consider an appeal from a decision by Subject Judge I. Accordingly, these allegations will be dismissed 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)(ii) and (iii). Complainant previously filed a complaint of judicial misconduct that was dismissed on these grounds. *See* J.C. No. 03-17-90103. Complainant’s attention is therefore directed to Rule 10(a), *Rules for Judicial-Conduct and Judicial-Disability Proceedings*.<sup>4</sup> Future abuse of the judicial misconduct complaint procedure may result in the imposition of restrictions pursuant to this provision.

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<sup>3</sup> To the extent the allegations are merits related, they are not cognizable as judicial 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*

<sup>4</sup> Rule 10(a) of the *Rules for Judicial-Conduct and Judicial-Disability Proceedings* provides:

s/ D. Brooks Smith

Chief Judge

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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 31, 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 31, 2020