

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

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J.C. No. 03-20-90029

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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: August 4, 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 Bankruptcy Judge (the “Subject Judge”). For the reasons discussed below, the complaint will be dismissed.<sup>1</sup>

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> Complainant filed a previous complaint against the same Subject Judge that was dismissed as merits-related and frivolous. *See* J.C. No. 03-20-90018.

As in her prior complaint, Complainant again makes allegations concerning the putative actions of an attorney, sheriff's office employees, and mortgage companies. Only federal judges, however, are covered by the Judicial Conduct and Disability Act. Accordingly, Complainant's allegations against these individuals and entities will not be addressed in this proceeding. 28 U.S.C. § 352(b)(1)(A)(i); Rule 1, *Rules for Judicial-Conduct and Judicial-Disability Proceedings*.

Complainant further alleges that the Subject Judge engaged in judicial misconduct because she is allowing the bankruptcy matter to proceed even though Complainant is no longer represented by counsel. In addition, she contends that the Subject Judge is being "unfair" because the Subject Judge is holding hearings and is "accelerating processes without allowing the plaintiff time to retain [a] new attorney." It is evident that Complainant seeks to dispute the merits of the Subject Judge's procedural rulings and decisions. 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). Thus, all such non-cognizable allegations are subject to dismissal. *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>2</sup>

To the extent that Complainant's allegations are not based solely on her disagreement with the merits of the Subject Judge's rulings, they are again unsubstantiated. Complainant provides no evidence of any misconduct on the part of the Subject Judge, and the record reveals no evidence to support such claims. Complainant's remaining allegations are therefore 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>3</sup>

Based on the above, this complaint will be dismissed under 28 U.S.C. § 352(b)(1)(A)(i), (ii), and (iii).

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<sup>2</sup> Notably, Complainant filed an appeal of one of the Subject Judge's orders raising some of the same issues she presents here. This appeal is currently pending with the District Court.

<sup>3</sup> Complainant also references two other federal judges in documents attached to her complaint. These judges have not been named as Subject Judges, but I have nonetheless reviewed these allegations under Rule 5 of the *Rules for Judicial-Conduct and Judicial-Disability Proceedings*. Complainant's vague and unsubstantiated allegations do not constitute reasonable grounds for inquiry into the existence of judicial misconduct and I decline to identify a complaint. *Id.*

s/ D. Brooks Smith

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Chief Judge

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ORDER

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(Filed: August 4, 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)(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: August 4, 2020