

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

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J.C. No. 03-20-90032

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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: September 15, 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 Magistrate 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).

In 2014, Complainant filed a petition for a writ of habeas corpus, which was referred to the Subject Judge. In 2015, shortly after briefing concluded, the Subject Judge issued a report and recommendation (R&R) in which she recommended that the habeas

petition be denied in part as procedurally defaulted and in part for lack of merit. Complainant filed objections to the R&R. The presiding District Judge overruled the objections, adopted the Subject Judge's R&R, and denied the petition.<sup>1</sup> Complainant sought a certificate of appealability from the Court of Appeals, which a panel of the Court denied. Complainant sought rehearing, and the full Court denied the request. Finally, Complainant filed a petition for a writ of certiorari in the United States Supreme Court. In 2017, the Supreme Court denied certiorari.

Complainant filed this complaint of judicial misconduct accompanied by eleven exhibits. In it, Complainant alleges that the Subject Judge “violated the law, the Constitution, and her oath of office.”<sup>2</sup> Among other things, Complainant posits that the Subject Judge “knew with complete certainty” that Complainant was prosecuted based on false testimony, that the state court’s findings were contrary to the evidence, and that prosecuting attorneys “lied” in court documents. Complainant further alleges that the Subject Judge’s R&R was written “to protect state judges, the district attorneys, and their family from being prosecuted for their crimes.”

Complainant argues that the Subject Judge’s R&R demonstrates an “inability to understand simple physics and elementary legal precepts” and reflects a “cover up [of]

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<sup>1</sup> The presiding District Judge is not a named Subject Judge of this Complaint.

<sup>2</sup> Complainant presents numerous allegations concerning state court judges, attorneys, and private individuals concerning their role in his underlying criminal conviction. Because such individuals are not federal judges and therefore are not subject to the Judicial Conduct and Disability Act, *See* 28 U.S.C. §§ 351, 352(b)(1)(A)(i); Rule 4, *Rules for Judicial-Conduct and Judicial-Disability Proceedings*, allegations of misconduct by such individuals will not be addressed in this opinion.

crimes committed by state judges and the assistant district attorneys.” Complainant further alleges that the Subject Judge has “deep ties with corrupt people” and used her position to protect the city from lawsuits. Complainant concludes that “[the Subject Judge] is racist, corrupt, and is a danger to the integrity of the justice system in this country.”

After careful review of the complaint and exhibits, it is apparent that Complainant’s allegations are primarily intended to collaterally attack the Subject Judge’s R&R. Such allegations are merits-related and therefore do not constitute cognizable misconduct. 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.”). Indeed, Complainant sought review of the Subject Judge’s R&R by filing objections with the presiding District Judge, and those objections were overruled. “The misconduct procedure [under the Judicial Conduct and Disability 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, Complainant’s merits-related 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*.

To the extent they are not merits-related, the allegations of the complaint are unsubstantiated. Complainant offers nothing more than his personal suspicion that the Subject Judge is “corrupt,” is involved in a “cover up,” acted illegally, and otherwise engaged in judicial misconduct. Neither the exhibits Complainant has provided nor the record as a whole provide support for such claims. Accordingly, the complaint 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*.

Based on the foregoing, this complaint will be 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: September 15, 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

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Chief Judge

Dated: September 15, 2020