

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

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J.C. No. 03-21-90003

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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: April 9, 2021)

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”).<sup>1</sup> 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).

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<sup>1</sup> To the extent Complainant’s allegations concern actions by individuals who are not covered by the Judicial Conduct and Disability Act, such as Clerk’s Office employees and attorneys, the allegations will not be addressed in this opinion. See 28 U.S.C. §§ 351, 352(b)(1)(A)(i); Rule 4, *Rules for Judicial-Conduct and Judicial-Disability Proceedings*.

The present complaint is similar to a prior complaint filed by Complainant against the same Subject Judge regarding a 2017 lawsuit. *See* J.C. No. 03-19-90016.<sup>2</sup> Complainant, who was not a party to the 2017 lawsuit, alleges that the Subject Judge’s spouse’s law firm represented an attorney who was the subject of an attorney grievance proceeding initiated by Complainant (“Attorney A”).<sup>3</sup> Complainant views this as evidence of judicial misconduct because Attorney A represented a party in the aforementioned 2017 civil action at the same time that Attorney A was represented by the spouse’s law firm. Complainant asserts that the Subject Judge has engaged in conflicts of interest, “wrongdoing,” and “corruption.”

Complainant also makes additional allegations concerning a 2020 lawsuit pending before the Subject Judge.<sup>4</sup> Complainant appears to allege that the Subject Judge should be removed from the 2020 lawsuit because: (1) the attorney named as a defendant in the 2020 lawsuit (“Attorney B”) used to work with Attorney A; and (2) Attorney A’s counsel and Attorney B’s counsel were “co-counsel” in the grievance proceedings discussed above.

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<sup>2</sup> Complainant also attaches documents filed by another Complainant regarding the same Subject Judge. *See* J.C. No. 03-19-90021. Both prior complaints of judicial misconduct were dismissed as frivolous and merits-related. Complainant complains about the dismissal of these prior complaints in the present matter and attaches documents from another Complainant complaining about their dismissal. The dismissals of these prior matters were upheld by the Judicial Council after the Complainants filed petitions for review and are not subject to further review. To the extent Complainant seeks my disqualification from considering the present complaint, his request is denied as circumstances do not warrant my disqualification. Rule 25(a), *Rules for Judicial-Conduct and Judicial-Disability Proceedings*.

<sup>3</sup> The attorney grievance proceeding was dismissed.

<sup>4</sup> Complainant is not a party to the 2020 lawsuit either.

Complainant seems to view this as a conflict because appeals of the dismissal of the attorney grievance proceedings remain pending. In addition, he alleges that Attorney A is assisting the plaintiff in the 2020 lawsuit because Attorney A's name is "littered throughout the pleading." Complainant contends that the Subject Judge is being blackmailed or extorted.

Complainant again fails to provide any evidence for his allegations of judicial misconduct. Although Complainant attaches hundreds of pages of exhibits to his complaint, none of them provide any evidence of judicial misconduct. Indeed, a review of the district court record for the 2017 case reflects that Attorney A wrote a letter to the Subject Judge stating that he was represented by the spouse's law firm partner in a personal matter.<sup>5</sup> Attorney A copied defense counsel on the letter and submitted it before the Subject Judge made any substantive rulings in the civil suit. The letter in question was docketed and available to all of the parties to review.<sup>6</sup> Thereafter, the civil suit was reassigned to another District Judge. There is no evidence of judicial misconduct and these allegations are again subject to dismissal for the same reasons discussed in J.C. No. 03-19-90016.

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<sup>5</sup> The letter stated that Attorney A had never met the Subject Judge's spouse or spoken to the spouse.

<sup>6</sup> Complainant views an alleged delay between the date on the letter and the date it was docketed on CM-ECF as evidence of misconduct. Any putative delay in the docketing of the letter on CM-ECF is not evidence of judicial misconduct on the part of the Subject Judge.

With respect to the 2020 lawsuit, Complainant likewise fails to provide any evidence of judicial misconduct. Notably, although allegations are made about Attorney A in the complaint initiating the 2020 civil suit, Attorney A is not listed as a party or counsel of record on the docket. Even if Attorney A was a named party or counsel associated with the lawsuit, the fact that Attorney A was represented by the Subject Judge's spouse's firm in a separate, administrative grievance proceeding would not constitute evidence of judicial misconduct. The fact that Attorney B's counsel may have worked with the Subject Judge's spouse's law firm in the course of the grievance proceedings is likewise not evidence of judicial misconduct. Furthermore, none of the parties to the 2020 civil suit have filed motions seeking the Subject Judge's recusal or otherwise indicated that the case should be reassigned for any reason. Accordingly, Complainant's allegations of judicial misconduct are dismissed as frivolous and unsupported by sufficient evidence to 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>7</sup>

For all of the foregoing reasons, the complaint is dismissed pursuant to 28 U.S.C. §§ 352(b)(1)(A)(i) and (iii). As this is Complainant's second complaint against the same

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<sup>7</sup> Complainant also makes allegations concerning a magistrate judge who has not been named as a Subject Judge. I have reviewed these allegations pursuant to Rule 5 of the *Rules for Judicial-Conduct and Judicial-Disability Proceedings* and I decline to identify a complaint based on these allegations as they do not set forth reasonable grounds for inquiry into whether misconduct occurred. Indeed, similar allegations against the same magistrate judge were previously rejected in J.C. No. 03-19-90020.

Subject Judge, and in view of the repetitive and frivolous nature of the complaints, Complainant is cautioned pursuant to Rule 10 of the *Rules for Judicial-Conduct and Judicial-Disability Proceedings*.<sup>8</sup>

s/ D. Brooks Smith  
Chief Judge

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<sup>8</sup> Rule 10(a) of the *Rules for Judicial-Conduct and Judicial-Disability Proceedings* provides:

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: April 9, 2021)

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) 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: April 9, 2021