

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

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J.C. No. 03-21-90007

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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 27, 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 (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 alleges that the Subject Judge should have entered default against the defendants in his civil proceedings and required defendants to answer his complaints. Complainant further complains that his proceedings were marked “closed” and challenges

a stay order entered in three of his cases that caused “severe delays.” Complainant also complains about the Subject Judge’s putative delay in acting on his motion to lift the stay order.<sup>1</sup>

It is apparent that Complainant’s allegations reflect his dissatisfaction with the merits of judicial decisions and rulings. Allegations disputing the merits of judicial rulings do not, however, 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*. 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, Complainant’s 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*.

Complainant further alleges that the Subject Judge has engaged in delay and “just sat idly.” Allegations of delay, however, are considered merits-related and are not

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<sup>1</sup> Complainant’s allegations concerning individuals who are not federal judges, such as attorneys and school officials, will not be addressed in these proceedings because only federal judges are 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*.

cognizable under the Judicial Conduct and Disability Act. Rule 4(b)(1), *Rules for Judicial-Conduct and Judicial-Disability Proceedings* (“Cognizable misconduct does not include an allegation about delay in rendering a decision or ruling, unless the allegation concerns an improper motive in delaying a particular decision or habitual delay in a significant number of unrelated cases.”). Complainant’s merits-related allegations of delay are, therefore, dismissed. Rule 11(c)(1)(B), *Rules for Judicial-Conduct and Judicial-Disability Proceedings*.

In any event, the stay order was not entered by the Subject Judge, but was entered by another District Judge pending resolution of an appeal Complainant filed in another civil suit against the same school district. The Subject Judge was assigned to the underlying cases in question after the stay order was entered. Two years after a Third Circuit panel issued an order affirming the District Court order appealed from, Complainant filed a motion to lift the stay. Approximately two months later, the Subject Judge entered an order granting in part Complainant’s motion to lift the stay. The Subject Judge further directed Complainant to file a second amended consolidated complaint so that litigation could proceed. Accordingly, there is no evidence of improper motive or habitual delay in a significant number of unrelated cases and these allegations are likewise dismissed.

To the extent Complainant’s allegations are not merits-related, they are baseless. A review of the record reveals no evidence for the existence of “immorality” or bias. Thus, Complainant’s remaining 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*.

Based on the foregoing, this complaint will be dismissed pursuant to 28 U.S.C. § 352(b)(1)(A)(i), (ii), and (iii). In view of the abusive language directed at the Subject Judge and others in the complaint, Complainant is cautioned pursuant to Rule 10 of the *Rules for Judicial-Conduct and Judicial-Disability Proceedings*.<sup>2</sup>

s/ D. Brooks Smith  
Chief Judge

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<sup>2</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 27, 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), (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: April 27, 2021