

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

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J.C. Nos. 03-21-90025, 03-21-90026

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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 30, 2021)

PRESENT: SMITH, *Chief Judge*.

This complaint is filed under the Judicial Conduct and Disability Act, 28 U.S.C. §§ 351-64, against two United States District Judges (“Subject Judge I” and “Subject Judge II”). 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 2013, Complainant filed a pro se civil action concerning a home mortgage. Subject Judge I ultimately dismissed the complaint for failure to state a claim and lack of standing, and also denied Complainant’s subsequent motions for reconsideration.

Complainant appealed the denial of her second reconsideration motion and the Court of Appeals affirmed. Complainant later moved several times to reopen the case. Subject Judge I denied the motions.

In 2019, Complainant filed a pro se civil action raising the same issues as the 2013 lawsuit. Subject Judge II dismissed the complaint on grounds of res judicata and collateral estoppel. The Court of Appeals affirmed the judgment. Subject Judge II later denied Complainants' post-judgment motions for reconsideration and recusal. Complainant did not appeal those orders.

In this complaint of misconduct, Complainant alleges that Subject Judge I "has committed misconduct which is evident in [Subject Judge I's] rulings." In addition, Complainant claims that both Subject Judges engaged in "Rubber Stamping" and "a failure . . . to follow the Law and the Constitution." Rather than elaborate upon these allegations, Complainant directs the Court to the numerous documents appended to the complaint, describing them as "self-explanatory." These include excerpts from briefs filed by Complainant arguing, *inter alia*, that Subject Judges I and II "ignored" their judicial function and failed to uphold the law and Constitution and copies of orders issued by the Subject Judges.

Upon review of the complaint and exhibits, it is apparent that Complainant wishes to collaterally attack the merits of judicial rulings, including the dismissals of her two complaints and the denials of her subsequent post-judgment motions. Such merits-related allegations 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.”). “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). Complainant’s merits-related allegations are therefore 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 identifies a purported “threat” made by a member of Subject Judge I’s staff. That individual allegedly informed Complainant that if Complainant did not file documents electronically, it would constitute an admission that her case lacks merit. A statement by a staff member is not directly attributable to Subject Judge I.<sup>1</sup> Furthermore, accepting that such a statement was made, the statement concerns court procedure and is not threatening on its face.<sup>2</sup> Accordingly, this allegation is subject to dismissal because, even if true, it does not constitute conduct prejudicial to the effective and expeditious

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<sup>1</sup> A judicial staff member is not federal judge and therefore is not subject to the Judicial Conduct and Disability Act. *See* 28 U.S.C. § 351(d); Rule 4, *Rules for Judicial-Conduct and Judicial-Disability Proceedings*. To the extent Complainant alleges inappropriate behavior on the part of the staff member, the allegations will not be addressed in this opinion. *See* 28 U.S.C. §§ 351, 352(b)(1)(A)(i).

<sup>2</sup> The purported statement may relate to Complainant’s decision to file a notice consenting to electronic filing, which appears on the docket in her case before Subject Judge I.

administration of the business of the courts. 28 U.S.C. § 352(b)(1)(A)(iii); Rule 11(c)(1)(A), *Rules for Judicial-Conduct and Judicial-Disability Proceedings*.

Finally, to the extent Complainant presents any other non-merits-related allegations of misconduct, they are lacking in evidentiary support. The documents appended to the complaint as well as the record in Complainant's two civil proceedings and related appeals do not reveal any basis for a claim of judicial misconduct. Accordingly, any 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).

s/ D. Brooks Smith  
Chief Judge

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ORDER

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(Filed: August 30, 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: August 30, 2021