

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

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J.C. No. 03-21-90027

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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 23, 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”). 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).

After a jury trial, Complainant was convicted of conspiracy, drug, and firearms charges and was sentenced to a lengthy term of imprisonment. Once judgment was entered and counsel had filed a notice of appeal, Complainant wrote a letter to the Subject

Judge requesting substitute counsel to represent him on appeal. The docket does not reflect a response to the letter. On appeal, Complainant moved the Court of Appeals for substitute counsel. The motion was denied. The Court of Appeals ultimately affirmed the judgment of conviction and sentence and remanded for further post-judgment proceedings on a discrete issue.

On remand, Complainant again wrote a letter to the Subject Judge requesting substitute counsel. Appointed counsel also filed a motion to withdraw, citing irreconcilable differences. The Subject Judge granted counsel's motion and appointed new counsel. Post-judgment proceedings are ongoing.

This complaint of judicial misconduct was mailed shortly before the Subject Judge granted counsel's motion to withdraw. In it, Complainant alleges that the Subject Judge "compelled" the first court-appointed attorney "to remain as Counsel despite clear Conflict of Interest," although Complainant does not describe any allegations to support the claimed conflict. Instead, Complainant states that the Subject Judge's failure to appoint new counsel prior to his appeal violated his constitutional rights. In addition, Complainant contends that the Subject Judge's failure to appoint new counsel after remand demonstrates "personal bias or prejudice either against the Defendant or in favor of any adverse party." Based upon these allegations, Complainant seeks the Subject Judge's recusal.

Clearly, Complainant's allegations are intended to collaterally attack the merits of the Subject Judge's rulings concerning the appointment of counsel. Such allegations are

merits-related and 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. . . .”). “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*.

Moreover, although Complainant requests recusal in this administrative proceeding, a review of the docket in Complainant’s criminal case reveals that neither he nor his counsel have ever filed a formal motion seeking that relief. A request for recusal must be presented to the presiding judge in the first instance. Moreover, a substantive decision rendered on such a recusal motion is merits-related and non-cognizable. *See* Rule 4(b)(1), *Rules for Judicial-Conduct and Judicial-Disability Proceedings*.

Finally, to the extent Complainant’s allegations of bias and prejudice are not based upon Complainant’s disagreement with the merits of the Subject Judge’s rulings, they are entirely lacking in evidentiary support. Accordingly, such 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)(ii) and (iii).

s/ D. Brooks Smith  
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Chief Judge

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ORDER

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(Filed: August 23, 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)(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 23, 2021