

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

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J.C. Nos. 03-21-90053, 03-21-90054

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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 29, 2021)

PRESENT: SMITH, *Chief Judge*.

This complaint is filed under the Judicial Conduct and Disability Act, 28 U.S.C. §§ 351-64, against a District Judge (“Subject Judge I”) and a Magistrate Judge (“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).

Over fifteen years ago, a jury found Complainant guilty of several serious crimes. The presiding District Judge<sup>1</sup> sentenced Complainant to a substantial term of imprisonment, which he is still serving. About five years ago, the Government filed a motion seeking to use funds that had been seized from Complainant's home prior to his arrest to pay his fines and assessments. Subject Judge II granted the motion.

In this complaint of judicial misconduct, Complainant alleges that the seized funds were described as "serialized and pre-recorded FBI money" in Complainant's indictment and were used as evidence against him. According to Complainant, the Government's recent decision to return a similar amount of money to Complainant demonstrates the Government's "fraud upon the court" and allegedly shows that Complainant's conviction was obtained by "fraudulent testimony and reports." Complainant claims that Subject Judge II "knew of" the Government's fraud and "turned a blind eye" to it.

It is apparent that Complainant is attempting to collaterally attack the merits of judicial decisions, including his underlying criminal conviction. Indeed, Complainant has filed a number of motions raising these allegations, including a supplemental motion under 28 U.S.C. § 2255 that remains pending. To the extent Complainant challenges judicial decisions, the 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, including a failure to recuse."). "The

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<sup>1</sup> The presiding District Judge has since retired and is not named as a Subject Judge of this complaint. The matter was reassigned to Subject Judge I about ten years ago.

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*.

To the extent the allegations are not merits-related, they are unsupported.

Complainant primarily alleges wrongdoing on the part of the government agents who investigated and arrested him, not the Subject Judges.<sup>2</sup> Although Complainant contends that Subject Judge II "turned a blind eye" to the government agents' alleged fraud, Complainant offers no evidence to substantiate such a claim. While Complainant has appended voluminous documentation to his complaint, the exhibits do not reveal that either of the Subject Judges engaged in any form of judicial misconduct. Accordingly, the allegations are subject to dismissal as 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)(D), *Rules for Judicial-Conduct and Judicial-Disability Proceedings*.

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<sup>2</sup> Government agents are not federal judges and therefore are 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*. Accordingly, to the extent Complainant alleges misconduct on the part of such individuals, the allegations will not be addressed in this opinion. *See* 28 U.S.C. §§ 351, 352(b)(1)(A)(i).

Based on the foregoing, the 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 29, 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: September 29, 2021