

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

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J.C. No. 03-21-90060

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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: November 4, 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 Magistrate 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).

Complainant is a plaintiff in a civil rights action that has been referred to the Subject Judge. Although he is represented by retained counsel, Complainant is dissatisfied with that representation. In particular, counsel filed a brief with which

Complainant disagrees. After Complainant notified the District Court of the disagreement, the Subject Judge held two hearings in which he afforded Complainant the opportunity to proceed pro se, retain new counsel, or remain with his current attorney. Complainant opted to remain with the attorney and proceed on the brief as filed. Recently, however, counsel moved to withdraw from the representation.

In this complaint of judicial misconduct, Complainant recounts his disagreements with his attorney and accuses the attorney of multiple forms of misconduct, including collusion with opposing counsel, corruption, accepting bribes, sabotage, and fraud.<sup>1</sup> Complainant contends that the attorney “intentionally gaslighted” the Subject Judge and thereby “created cognitive dissonance where [the Subject Judge] made a decision that was prejudicial to the effective and expeditious administration of the business of the courts.” Among other things, Complainant alleges that the Subject Judge failed to investigate and remedy his claim of attorney misconduct, demonstrated bias in favor of the attorney, and deprived Complainant of due process.

To the extent Complainant’s allegations reflect a dispute with the Subject Judge’s actions during the hearing on the disagreement between Complainant and his counsel, the allegations of the complaint are merits related. Merits-related allegations do not constitute cognizable misconduct. Rule 4(b)(1), *Rules for Judicial-Conduct and Judicial-Disability*

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<sup>1</sup> A private attorney is not a 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*. Accordingly, Complainant’s allegations of misconduct on the part of the attorney will not be addressed in this opinion. *See* 28 U.S.C. §§ 351, 352(b)(1)(A)(i).

*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’s non-merits-related allegations of judicial misconduct are groundless. A review of the record does not reveal a basis for concluding that judicial misconduct has occurred. Indeed, the record shows that the Subject Judge held two hearings on Complainant’s attorney misconduct allegations, and Complainant repeatedly confirmed that he wished to proceed with that attorney’s representation despite his concerns about the attorney’s performance. The allegations of the complaint are therefore 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  
Chief Judge

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ORDER

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(Filed: November 4, 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: November 4, 2021