

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

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J.C. Nos. 03-22-90071 and 03-22-90072

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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 2, 2022)

PRESENT: AMBRO, Circuit Judge.<sup>1</sup>

The present complaints were filed under the Judicial Conduct and Disability Act, 28 U.S.C. §§ 351-64, against two United States Circuit Judges (“Subject Judge I” and “Subject Judge II”). For the reasons discussed below, the complaints will be dismissed.<sup>2</sup>

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).

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<sup>1</sup> Acting pursuant to Rule 25(f), Rules for Judicial-Conduct and Judicial-Disability Proceedings.

<sup>2</sup> Complainant also sought to file a complaint against a judge who is deceased. This complaint was not accepted for filing. See Rules 1, 8, Rules for Judicial-Conduct and Judicial-Disability Proceedings.

Complainant alleges that the Subject Judges sat on the panel that dismissed his appeal and offered an “inappropriate” opinion about the standard of review. Complainant alleges that a different standard of review should have been applied to his claims. It is evident that Complainant seeks to collaterally attack the Subject Judges’ decision dismissing his appeal. Merits-related allegations are not 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 that calls into question the correctness of a judge’s ruling, including a failure to recuse.”). See also In re Memorandum of Decision of Judicial Conference Committee on Judicial Conduct and Disability, 517 F.3d 558, 561 (U.S. Jud. Conf. 2008) (“The Act is intended to further ‘the effective and expeditious administration of the business of the courts.’ It would be entirely contrary to that purpose to use a misconduct proceeding to obtain redress for—or even criticism of—the merits of a decision with which a litigant or misconduct complainant disagrees.”) 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 that Complainant alleges the Subject Judges had an improper motive for their decision, Complainant’s allegations are likewise subject to dismissal. Complainant provides no support for his allegations of judicial misconduct other than his disagreement with the Subject Judges’ decisions. The record has been reviewed and there is no evidence of judicial misconduct. Accordingly, Complainant’s allegations of judicial

misconduct are dismissed as frivolous and unsupported by any evidence that would raise an inference that judicial misconduct has occurred. 28 U.S.C. § 352(b)(1)(A)(iii); Rule 11(c)(1)(C), 11(c)(1)(D), Rules for Judicial-Conduct and Judicial-Disability Proceedings. It is noted that Complainant previously filed two complaints that were dismissed as frivolous and merits-related. See J.C. Nos. 03-19-90037 and 03-20-90008. Given the frivolous and merits-related nature of Complainant's current and prior allegations, his attention is directed to Rule 10(a), Rules for Judicial-Conduct and Judicial-Disability Proceedings.<sup>3</sup>

Based on the foregoing, the complaints will be dismissed pursuant to 28 U.S.C. § 352(b)(1)(A)(i), (ii), and (iii).

s/ Thomas L. Ambro  
Circuit Judge

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<sup>3</sup> Rule 10(a), Rules for Judicial-Conduct and Judicial-Disability Proceedings, states:

(a) **Abusive Complaints.** 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: November 2, 2022)

PRESENT: AMBRO, Circuit Judge.<sup>1</sup>

On the basis of the foregoing opinion entered on this date, it is ORDERED AND ADJUDGED that the written complaints brought pursuant to 28 U.S.C. § 351 are 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.

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<sup>1</sup> Acting pursuant to Rule 25(f), Rules for Judicial-Conduct and Judicial-Disability Proceedings.

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).

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s/ Thomas L. Ambro  
Circuit Judge

Dated: November 2, 2022