

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

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J.C. No. 03-16-90057

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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: January 25, 2017)

PRESENT: SMITH, Chief Judge.

This is a complaint filed under the Judicial Conduct and Disability Act, 28 U.S.C. §§ 351-64, against a United States District Judge (hereinafter “Subject Judge”).<sup>1</sup> For the reasons discussed below, the complaint 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,

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<sup>1</sup> Complainant previously filed another complaint of judicial misconduct against the same Subject Judge regarding Complainant’s sentencing and a motion filed under 28 U.S.C. § 2255. J.C. No. 03-14-90077. This complaint was dismissed as frivolous and merits-related.

<sup>2</sup> As a preliminary matter, Complainant makes allegations concerning individuals who are not subject to the Judicial Conduct and Disability Act; e.g., Clerk’s office and judiciary employees. See 28 U.S.C. §§ 351, 352(b)(1)(A)(i); Rule 4, Rules for Judicial-Conduct and Judicial-Disability Proceedings. Accordingly, these allegations will not be addressed in this opinion.

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). The “misconduct procedure [under the 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 alleges that the Subject Judge interfered with his constitutional rights and engaged in conduct prejudicial to the expeditious administration of the business of the courts. Despite Complainant’s protestations to the contrary, however, Complainant’s sole support for these allegations is his disagreement with the Subject Judge’s rulings and putative actions in his case. Specifically, Complainant complains about a second amended motion under 28 U.S.C. § 2255 that was not docketed and a putative refusal to docket a motion to correct the docket. These allegations are plainly merits-related and are not cognizable under the Judicial Conduct and Disability Act. See 28 U.S.C.

§ 352(b)(1)(A)(ii) (chief judge may dismiss a complaint if he or she finds that it is directly related to the merits of a decision or procedural ruling); Rule 3(h)(3)(A), Rules for Judicial-Conduct and Judicial-Disability Proceedings (“[a]n allegation that calls into question the correctness of a judge’s ruling . . . without more, is merits-related”); Rule 11(c)(1)(B), Rules for Judicial-Conduct and Judicial-Disability Proceedings (a complaint

must be dismissed in whole or in part to the extent that the chief judge concludes that the complaint is directly related to the merits of a decision or procedural ruling).

In any event, there is no evidence to support Complainant's allegations of judicial misconduct. As part of Complainant's plea agreement, Complainant waived his right to present a collateral challenge to his conviction and sentence. Complainant filed a direct appeal, but the District Court's judgment was affirmed because the appellate panel held that the appellate waiver in Complainant's plea agreement was enforceable.<sup>3</sup> Notably, in another appeal, a different Third Circuit panel concluded that the District Court's order enjoining Complainant from future filings was limited to his Section 2255 proceedings that ended "upon the conclusion of [Complainant's] attempt to appeal." In the meantime, Complainant filed a petition for writ of mandamus seeking to compel the Clerk to file any papers he submitted in District Court and to prohibit all District and Magistrate Judges from enforcing an order enjoining him from future filings. Complainant's mandamus petition was denied.<sup>4</sup> Accordingly, Complainant's allegations of judicial misconduct are dismissed as frivolous and unsupported by any 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.

For the foregoing reasons, the complaint is dismissed pursuant to 28 U.S.C.

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<sup>3</sup> I sat on the panel that affirmed Complainant's criminal judgment. I make no comment in these separate administrative proceedings regarding the merits of any of Complainant's arguments made in his criminal and/or appellate proceedings.

<sup>4</sup> Complainant also filed a prior unsuccessful mandamus petition asking the Court to vacate a District Court order dismissing his motion pursuant to Section 2255.

§ 352(b)(1)(A)(i), (ii), and (iii).

s/ D. Brooks Smith

Chief Judge

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ORDER

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(Filed: January 25, 2017)

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.

Rule 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: January 25, 2017