

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

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J.C. No. 03-17-90002

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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: May 18, 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”). 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). 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 engaged in judicial misconduct because she stated in an order that Complainant had admitted to illegal and possibly criminal activity in a motion. According to Complainant, the Subject Judge made this statement after "apparently conducting her own administrative and investigative review . . . and nowhere did anything even remotely illegal get discussed [in] that motion. [Complainant] even specifically stated that the intervening request contains declarations that he does not engage in illegal computer fraud and abuse. But, somehow [the Subject Judge] did a police investigation and review and stated on record that [Complainant] was engaging in illegal conduct."

The record has been reviewed and there is no evidence of judicial misconduct. Complaint appears to be referencing the Subject Judge's statement made in a CM-ECF text-only order denying his motion to intervene:

[Complainant's] Motion, in which he essentially claims and/or admits to engaging in criminal conduct, is legally frivolous. Furthermore, to the extent that [Complainant] may have an interest in this case, Plaintiff has brought this lawsuit as a class action, and [Complainant] has failed to demonstrate: (1) why his interest is any different from any other putative class member; or (2) why his presumed interest cannot properly be addressed through the class-action process and/or mechanisms. For all of these reasons, [Complainant's] Motion to Intervene is DENIED.

The Subject Judge's statements do not constitute judicial misconduct. Indeed, in the motion in question, Complainant describes himself as a "cyber hacker" and, although he denies using his skills for illegal means, states that he has routine communications with the Syrian Electronic Army and the hacker group Anonymous and "has divulged information to Wikileaks." Furthermore, there is no evidence that the Subject Judge engaged in any sort of improper "administrative and investigative review." For these reasons, Complainant's allegations 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*.

To the extent Complainant seeks to collaterally attack the Subject Judge's rulings in the underlying civil matter, his allegations are dismissed as merits-related. 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, including a failure to recuse, 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).

For the foregoing reasons, the complaint is 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: May 18, 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)(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: May 18, 2017