

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

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J.C. No. 03-17-90024

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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: July 11, 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.<sup>1</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). The “misconduct procedure [under the Act] is not designed as a substitute for, or supplement to, appeals or

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<sup>1</sup> A prior complaint that Complainant filed against a different United States District Judge was dismissed as merits-related and frivolous. *See* J.C. No. 03-15-90103.

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).

As a preliminary matter, to the extent Complainant seeks to complain about the actions of individuals who are not subject to the Judicial Conduct and Disability Act, such as attorneys, defendants, and law enforcement agencies, his allegations will not be addressed in this opinion. *See* 28 U.S.C. §§ 351, 352(b)(1)(A)(i); Rule 4, *Rules for Judicial-Conduct and Judicial-Disability Proceedings*.

Complainant complains about the Subject Judge's decisions and procedural rulings in his civil suit against a former employer. For example, Complainant claims that the Subject Judge disregarded "concrete evidence", neglected to observe that the defendants had broken civil laws, denied an opportunity to join claims, and denied every motion he filed. Furthermore, Complainant maintains that the Subject Judge "did not rule in a way that was fair to me as a Plaintiff." Complainant plainly seeks to collaterally attack the Subject Judge's rulings in the underlying civil matter and thus 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 . . . 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).<sup>2</sup>

To the extent that Complainant complains that the Subject Judge had an improper motive for any of his rulings, his allegations are likewise subject to dismissal. The record has been reviewed and there is no evidence of judicial misconduct. Notably, Complainant filed an appeal of the Subject Judge's order granting summary judgement in favor of defendants, but his appeal was dismissed for failure to timely prosecute. 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*.

Furthermore, Complainant alleges that he has been harassed and arrested several times by "police agencies" without provocation and that this "suggests the participation by the federal district judge in political and social affairs . . . ." Complainant provides no support for these allegations, and they are dismissed as frivolous and unsupported by any evidence that would raise an inference that misconduct has occurred. *Id.*

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

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<sup>2</sup> Complainant made additional merits-related allegations in unsworn correspondence that he submitted after filing his initial complaint. I have considered these unsworn allegations under Rule 5, *Rules for Judicial-Conduct and Judicial-Disability Proceedings*. I conclude the allegations do not provide "reasonable grounds for inquiry" into the existence of misconduct or disability and I therefore decline to identify any complaints based upon them.

§ 352(b)(1)(A)(i), (ii), and (iii).

s/ D. Brooks Smith  
Chief Judge

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ORDER

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(Filed: July 11, 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: July 11, 2017