

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

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J.C. No. 03-17-90048

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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: September 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 Senior United States District Judge (the “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, who was a defendant in a criminal proceeding before the Subject Judge, alleges that he acted as a government informant for a period of time. When his role

as an informant became too dangerous, he discontinued assisting the government. He alleges that the Subject Judge and others then began retaliating against him.<sup>1</sup>

In his criminal proceeding, Complainant was tried before a jury, was convicted of drug and gun-related crimes, and the Subject Judge sentenced him to a term of imprisonment. Complainant appealed the conviction and the Court of Appeals affirmed. Complainant filed a motion to set aside, vacate, or correct the sentence, which the Subject Judge denied. Complainant appealed and the Court of Appeals declined to issue a certificate of appealability. Last year, the Complainant's case was reassigned from the Subject Judge to a different District Judge who is not a subject of this complaint. Most recently, the Court of Appeals denied Complainant's motion for leave to file a second or successive habeas petition.

In this lengthy complaint of judicial misconduct, Complainant recounts in detail his allegations of retaliation, which largely echo the claims set forth in his motion to set aside, vacate, or correct his sentence. Among other things, Complainant alleges that the Subject Judge was aware that Complainant's indictment was defective and then "participated in forging an indictment against [Complainant] to cover up the extreme constitutional violation and allow the government to continue prosecuting him until he was convicted and sentenced." In addition, Complainant alleges that the Subject Judge "knowingly and

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<sup>1</sup> Complainant alleges that he suffered retaliation by the prosecutor, his defense attorney, and others. To the extent Complainant's allegations concern individuals who are not federal judges and who therefore are not subject to the Judicial Conduct and Disability Act, the 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*.

biasly [*sic*] denied [Complainant's] suppression motion, during pretrial stage, because he discontinued his cooperation." Complainant further alleges that the Subject Judge "stated that [Complainant's] arrest was proper" although "[t]he record shows that is false." After his conviction, when Complainant filed a motion to set aside, vacate, or correct his sentence, Complainant alleges that the Subject Judge issued a "vague opinion that didn't properly address any of [Complainant's] claims" and that she "continued to ignore the record." Along with the complaint of misconduct, Complainant provided a voluminous appendix of materials from his criminal proceeding and related appellate matters, including copies of the allegedly falsified indictment, correspondence, portions of transcripts and legal briefs, and copies of opinions by the Subject Judge.

It is apparent that the vast majority of Complainant's allegations are intended to attack the validity of his conviction by challenging the indictment, the Subject Judge's pre-trial rulings, and other aspects of Complainant's criminal proceeding. Such allegations are clearly merits-related. "An allegation that calls into question the correctness of a judge's ruling, . . . without more, is merits-related." Rule 3(h)(3)(A), *Rules for Judicial-Conduct and Judicial-Disability Proceedings*. Merits-related allegations do not constitute cognizable misconduct under the Judicial Conduct and Disability Act. *See* 28 U.S.C. § 352(b)(1)(A)(ii); Rules 3(h)(3)(A), 11(c)(1)(B), *Rules for Judicial-Conduct and Judicial-Disability Proceedings*.

This administrative proceeding is not an appropriate forum for re-litigating claims that were previously presented to, and ruled upon, by the Subject Judge and the Court of

Appeals. 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). Accordingly, Complainant’s merits-related allegations will be dismissed.

When considered independently from the merits-related allegations, Complainant’s allegations that the Subject Judge is biased, has forged documents, or has participated in a cover-up are wholly lacking evidentiary support. Accordingly, all remaining allegations are 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)(i), (ii), and (iii).

s/ D. Brooks Smith  
Chief Judge

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ORDER

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(Filed: September 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.

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: September 11, 2017