

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

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J.C. No. 03-17-90085

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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: February 23, 2018 )

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 (the “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

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<sup>1</sup> Complainant makes allegations concerning entities and individuals who are not covered by the Judicial Conduct and Disability Act; e.g., the “government” and an Assistant United States Attorney. Accordingly, these 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*.

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 alleges that the Subject Judge suffers from a disability and was mentally incompetent during her son's trial and sentencing approximately ten years ago, as well as during subsequent proceedings. Complainant's complaint reiterates some of the same allegations made by her son in a prior complaint (J.C. No. 03-17-90047).<sup>2</sup>

Complainant alleges that as a result of the Subject Judge's disability, the Subject Judge sentenced her son incorrectly, was manipulated by the prosecutor, and improperly denied Complainant's motion for return of property seized when her son was arrested.

To the extent Complainant seeks relief regarding her son's criminal conviction and sentence, habeas proceedings, Complainant's motion, or other cases, Complainant's allegations are dismissed as merits-related. *See* 28 U.S.C. § 352(b)(1)(A)(ii); 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); Rule 3(h)(3)(B), *Rules for Judicial-Conduct and Judicial-Disability Proceedings* (cognizable misconduct does not include delay in rendering a decision or ruling, unless the allegation concerns an improper motive or habitual delay in a significant number of unrelated cases); Rule 11(c)(1)(B), *Rules for Judicial-Conduct and Judicial-Disability Proceedings*. There is no provision under the Judicial Conduct and Disability

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<sup>2</sup> Complainant's son's complaint was dismissed in part and concluded in part. *See* J.C. No. 03-17-90047. His petition for review was denied by the Judicial Council. *Id.*

Act permitting litigants to collaterally attack a judge's rulings.<sup>3</sup> *In re Memorandum of Decision of Judicial Conference Committee on Judicial Conduct and Disability*, 517 F.3d 558, 561 (U.S. Jud. Conf. 2008) (“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.”). Any merits-related claims must be filed in the District Court.

With respect to Complainant’s allegations regarding the Subject Judge’s disability, both past and present, the complaint proceeding is concluded because the Subject Judge has taken inactive senior status and is no longer assigned any cases. Accordingly, intervening events have rendered Complainant’s allegations moot. 28 U.S.C. § 352(b)(2); *see also* Rule 11(e), *Rules for Judicial-Conduct and Judicial-Disability Proceedings* (“The chief judge may conclude a complaint proceeding in whole or in part upon determining that intervening events render some or all of the allegations moot or make remedial action impossible.”).

Based on the foregoing, the complaint will be dismissed in part pursuant to 28 U.S.C. § 352(b)(1)(A)(i), (ii) and concluded in part pursuant to 28 U.S.C. § 352(b)(2).

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<sup>3</sup> Notably, Complainant’s son appealed his conviction and sentence years ago and they were affirmed by a panel of Court of Appeals judges. A subsequent request for a certificate of appealability in Complainant’s son’s habeas proceeding was denied. Complainant’s son also recently filed a motion to recall the mandate arguing that the Subject Judge was incompetent during his sentencing and at trial. A panel of Third Circuit Court of Appeals judges denied the motion.

s/ D. Brooks Smith  
Chief Judge

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ORDER

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(Filed: February 23, 2018)

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 in part under 28 U.S.C. § 352(b)(1)(A)(i), (ii) and concluded in part under 28 U.S.C. § 352(b)(2).

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: February 23, 2018