

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

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J.C. No. 03-18-90189

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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: December 13, 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. 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).

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<sup>1</sup> Complainant also filed a prior complaint of judicial misconduct naming a different District Judge and a Magistrate judge. The complaint was dismissed as frivolous and merits-related. J.C. Nos. 03-18-90029 and 03-18-90030.

Complainant, a prisoner who is subject to the “three strikes rule,” 28 U.S.C. § 1915(g), filed a pro se civil complaint that was transferred to another District Court within this Circuit. Complainant attempted to appeal the transfer of his case, but the Subject Judge dismissed his appeal, concluding that his appeal was untimely and that, even assuming *arguendo* that the appeal was timely filed, the order transferring the case was neither clearly erroneous nor contrary to law.

In the present complaint of judicial misconduct, Complainant expresses his disagreement with the Subject Judge’s decision and contends that his case was transferred without considering his claim of imminent danger. Complainant also claims that the Subject Judge did not give him an opportunity to adequately brief his issues or arguments. These allegations are merits-related. Rule 3(h)(3)(A), *Rules for Judicial-Conduct and Judicial-Disability Proceedings* (“An allegation that calls into question the correctness of a judge’s ruling . . . without more, is merits-related.”). 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*. Accordingly, Complainant’s merits-related allegations are subject to dismissal.

Complainant further alleges that the Subject Judge deliberately delayed answering his imminent danger issues and the processing of any appeal to the Third Circuit. These allegations are likewise subject to dismissal as merits-related. 28 U.S.C.

§ 352(b)(1)(A)(ii). *See also* Rules 3(h)(3)(A), 3(h)(3)(B) (cognizable misconduct does not include “an allegation about delay in rendering a decision or ruling, unless the allegation concerns an improper motive in delaying a particular decision or habitual delay in a significant number of unrelated cases”), 11(c)(1)(B), *Rules for Judicial-Conduct and Judicial-Disability Proceedings*. To the extent Complainant suggests there was an improper motive or conspiracy responsible for the putative delay, his allegations are dismissed pursuant to 28 U.S.C. § 352(b)(1)(A)(iii) as unsupported by any evidence that would raise an inference that misconduct occurred.

In any event, as I concluded in the opinion addressing J.C. Nos. 03-18-90029 and 03-18-90030, the record reflects that the imminent danger motion was resolved without undue delay by the transferee District Judge. 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)(ii) and (iii).

s/ D. Brooks Smith  
Chief Judge

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ORDER

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(Filed: December 13, 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 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.

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: December 13, 2018