

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

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J.C. Nos. 03-18-90029, 03-18-90030

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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, 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 Magistrate Judge (“Subject Judge I”) and a United States District Judge (“Subject Judge II”). 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, a prisoner who is subject to the “three strikes rule,” 28 U.S.C. § 1915(g), filed a pro se civil complaint that was assigned to Subject Judge I. Subject Judge I transferred the complaint to another District Court within this Circuit. Upon transfer, the matter was assigned to Subject Judge II. Complainant then moved to proceed *in forma pauperis* and claimed that he faces imminent danger of serious physical injury. While that motion was pending, Complainant filed a petition for a writ of mandamus in the Court of Appeals, seeking an order directing Subject Judge II to hold a hearing addressing Complainant’s imminent danger claim. The petition was denied because Complainant’s motion had not been pending for an unduly lengthy period. Recently, Subject Judge II issued a memorandum opinion and order concluding that Complainant did not establish imminent danger of serious physical injury, denying the motion to proceed *in forma pauperis*, and directing that the complaint be dismissed if Complainant does not pay the filing fee. Complainant did not pay the fee as directed, and Subject Judge II therefore dismissed the case.

In this complaint of judicial misconduct, Complainant expresses his disagreement with Subject Judge I’s decision to transfer his complaint, reiterates his claim that he faces imminent danger, and demands a hearing on his imminent danger claim. It is apparent that 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, including a failure to recuse, 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.

Apart from the merits-related allegations, Complainant accuses the Subject Judges of “ignoring” his imminent danger claim and of contributing to the danger he allegedly faces. The record reflects, however, that the imminent danger motion was resolved without undue delay, and was therefore not ignored. Moreover, Complainant offers nothing to substantiate the claim that the Subject Judges contributed to any danger Complainant claims to face. Complainant also hurls slurs at the Subject Judges, describing them as “stupid” and as “clowns.” Invective and insult do not provide evidence of judicial misconduct. 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: May 18, 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: May 18, 2018