

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

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J.C. No. 03-18-90098

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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 3, 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.

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 pro se litigant, filed civil complaints in 2011 and 2014, which were assigned to the Subject Judge. The first complaint alleged a claim under the Federal Tort

Claims Act. The Subject Judge dismissed the complaint with prejudice for numerous reasons, including failure to provide a plausible legal theory, failure to establish subject matter jurisdiction, immunity, and statute of limitations grounds. Complainant did not appeal.

Complainant's second complaint raised claims concerning the termination of his parental rights by a state court as well as related misconduct. The Subject Judge dismissed the complaint for lack of subject matter jurisdiction. Complainant appealed. The Court of Appeals vacated the dismissal as to certain claims of misconduct. On remand, Complainant amended the complaint and the defendants filed motions to dismiss. The District Court again dismissed the complaint, and Complainant again appealed. The Court of Appeals affirmed the dismissal.

While this complaint of judicial misconduct is not a model of clarity, it appears that Complainant largely expresses disagreement with decisions and rulings that the Subject Judge rendered in the course of the two civil proceedings. Complainant alleges, for instance, that the Subject Judge's dismissal of the first action "intentionally turned a blind eye on [his] substantial rights" and violated the Americans with Disabilities Act. Similarly, Complainant alleges that the Subject Judge's decision not to enter a default judgment against the defendants in the second action "violated [his] substantial rights" and "skirted the edges of impropriety."

To the extent these allegations are intended to collaterally challenge the decisions and rulings rendered by the Subject Judge in the course of the two civil actions, Complainant's 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."). Because 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*, these allegations are subject to dismissal.

All of Complainant's non-merits-related allegations are baseless. Complainant offers a series of bare allegations of misconduct, such as "using the . . . judgeship to 'politically contribute' to the unlawful act of abuse of process" and acting in a manner that "appears politically motivated for future appointment and political benefits." Complainant offers no evidentiary support for these allegations, and a careful review of the record reveals no basis for a claim of judicial misconduct. Such allegations are therefore 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: July 3, 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: July 3, 2018