

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

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J.C. No. 03-18-90163

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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 25, 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 prisoner subject to the “three strikes rule,” *see* 28 U.S.C. § 1915(g), filed a pro se civil complaint that was transferred to the Subject Judge. Complainant moved to proceed *in forma pauperis* and claimed that he faces imminent danger of serious

physical injury. The Subject Judge 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, and the complaint was subsequently dismissed. Complainant's appeal is pending.

In this complaint of judicial misconduct, Complainant alleges that the Subject Judge "let [his] petition lay for some 6-7 months" and then "summar[il]y denied [him] leave to proceed under imminent danger (without) conducting any inquiry into [his] allegations." Complainant contends that the Subject Judge's decision not to hold a hearing on the imminent danger claims constitutes conduct prejudicial to the effective and expeditious administration of the business of the courts. In addition, Complainant alleges that the language of the Subject Judge's memorandum and order denying *in forma pauperis* status reflects "clear judicial bias and or antagonism," because it describes Complainant as a "prolific filer" and cites case law holding that claims of imminent danger will not be credited if they are conclusory, ridiculous, fantastic, or delusional.

Complainant's disagreements with the Subject Judge's decisions and rulings, including the determination not to hold a hearing and the denial of the imminent danger claims, are clearly 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, such allegations are subject to dismissal.

To the extent Complainant alleges that the Subject Judge improperly “let [his] petition lay,” it was observed in the previous opinion addressing Complainant’s first complaint of judicial misconduct naming this Subject Judge, J.C. No. 03-18-90029, 30, that the imminent danger motion was resolved without undue delay. Because there was no undue delay, Complainant’s allegation of delay is 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*.

Finally, Complainant’s claims of bias and antagonism are unfounded. Upon review, it is apparent that the language of the Subject Judge’s memorandum opinion and order is not demonstrably egregious and hostile, and therefore does not constitute judicial misconduct. *See* Rule 3(h)(1)(D), *Rules for Judicial-Conduct and Judicial-Disability Proceedings*. Accordingly, these claims are also 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*. Moreover, to the extent Complainant disagrees with conclusions reached in the memorandum opinion and order, including the Subject Judge’s determination that Complainant’s allegations of imminent danger were vague and

speculative or the finding that Complainant is a prolific litigant, such disagreements are, as already noted, merits-related and not cognizable as misconduct. *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*.

Based on the foregoing, this complaint will be dismissed pursuant to 28 U.S.C. §§ 352(b)(1)(A)(ii) and (iii). Because this is Complainant's second complaint to be dismissed on these grounds within a period of three months, Complainant's attention is directed to Rule 10(a), *Rules for Judicial-Conduct and Judicial-Disability Proceedings*.<sup>1</sup> Future abuse of the judicial misconduct complaint procedure may result in the imposition of restrictions under this provision.

s/ D. Brooks Smith  
Chief Judge

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<sup>1</sup> Rule 10(a) of the *Rules of Judicial-Conduct and Judicial-Disability Proceedings* provides:

Abusive Complaints. A complainant who has filed repetitive, harassing, or frivolous complaints, or has otherwise abused the complaint procedure, may be restricted from filing further complaints. After giving the complainant an opportunity to show cause in writing why his or her right to file further complaints should not be limited, the judicial council may prohibit, restrict, or impose conditions on the complainant's use of the complaint procedure. Upon written request of the complainant, the judicial council may revise or withdraw any prohibition, restriction, or condition previously imposed.

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ORDER

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(Filed: July 25, 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 25, 2018