

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

---

J.C. No. 03-19-90045

---

IN RE: COMPLAINT OF JUDICIAL MISCONDUCT  
OR DISABILITY

---

ORIGINAL PROCEEDINGS UNDER 28 U.S.C. § 351

---

MEMORANDUM OPINION

---

(Filed: September 16, 2019)

PRESENT: SMITH, *Chief Judge*.

This complaint is filed under the Judicial Conduct and Disability Act, 28 U.S.C. §§ 351-64, against a United States District Judge (the “Subject Judge”).<sup>1</sup> 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).

---

<sup>1</sup> Complainant also alleges misconduct on the part of the Clerk of the District Court. Such allegations will not be considered because the Clerk of the District Court is not a federal judge and therefore is not subject to the Judicial Conduct and Disability Act. See 28 U.S.C. §§ 351, 352(b)(1)(A)(i); Rule 1(b), *Rules for Judicial-Conduct and Judicial-Disability Proceedings*.

Complainant filed a pro se petition for a writ of mandamus directed to a state court judge. The presiding District Judge dismissed the petition as frivolous, for failure to state a claim upon which relief can be granted, and for lack of subject matter jurisdiction. Complainant did not appeal, but has continued to file numerous post-judgment objections and motions repeatedly seeking, *inter alia*, entry of a default judgment against the state court judge. Complainant mailed one such document directly to the Subject Judge. The docket reflects that the Subject Judge did not act on the document, and instead returned it to the presiding District Judge for disposition. The submission was referred to the Magistrate Judge, who denied it as duplicative of a prior submission.

In this complaint of judicial misconduct, Complainant alleges that the “primary issue” is that the District Court proceeding “is in Default pursuant to Federal Rules of Civil Procedure 12(a)(1)(i) and 55.” In addition, Complainant alleges that the presiding District Judge erroneously described Complainant as a “defendant” rather than as a petitioner; by doing so, Complainant alleges, the presiding District Judge “fraudulent[ly] and prejudicially interjected himself into a Constitutional complaint.”<sup>2</sup> Finally, Complainant appended to the complaint a copy of the document that was sent to the Subject Judge, which Complainant describes as “[o]ne of many unanswered motions

---

<sup>2</sup> Although Complainant alleges misconduct on the part of the presiding District Judge, the complaint does not name the presiding District Judge as a Subject Judge. Having reviewed the allegations concerning the presiding District Judge, the allegations do not provide “reasonable grounds for inquiry” into the existence of judicial misconduct. Accordingly, no complaint will be identified against the presiding District Judge. *See* Rule 5(a), *Rules for Judicial-Conduct and Judicial-Disability Proceedings*.

before this judge.” Complainant alleges that the Subject Judge’s failure to grant relief constitutes “abuse, fraud and violation of our constitutional rights!”

“Cognizable misconduct does not include an allegation that calls into question the correctness of a judge’s ruling, including a failure to recuse.” Rule 4(b)(1), *Rules for Judicial-Conduct and Judicial-Disability Proceedings*. Thus, to the extent Complainant challenges the manner in which the Subject Judge or presiding District Judge addressed the post-judgment submissions seeking entry of a default judgment, the allegations do not constitute cognizable misconduct under the Judicial Conduct and Disability Act. Such non-cognizable allegations are therefore subject to dismissal. *See* 28 U.S.C.

§ 352(b)(1)(A)(ii); Rules 4(b)(1), 11(c)(1)(B), *Rules for Judicial-Conduct and Judicial-Disability Proceedings*.

In addition, Complainant is mistaken that the document sent to the Subject Judge was “unanswered.” Rather, as previously discussed, it is apparent that the document was considered. Moreover, a careful review of the record reveals no evidence to support the allegations of fraud, abuse, or any form of judicial misconduct. Accordingly, Complainant’s remaining allegations will be dismissed 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)(i), (ii), and (iii). Complainant previously filed two complaints of judicial

misconduct that also were dismissed as merits-related, unsupported, and frivolous. *See* J.C. Nos. 03-18-90060, 03-18-90186. Accordingly, Complainant’s attention is directed to Rule 10(a), *Rules for Judicial-Conduct and Judicial-Disability Proceedings*.<sup>3</sup> Future abuse of the judicial misconduct complaint procedure may result in the imposition of restrictions pursuant to this provision.

s/ D. Brooks Smith  
Chief Judge

---

<sup>3</sup> Rule 10(a) of the *Rules for 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.

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

---

J.C. No. 03-19-90045

---

IN RE: COMPLAINT OF JUDICIAL MISCONDUCT  
OR DISABILITY

---

ORIGINAL PROCEEDINGS UNDER 28 U.S.C. § 351

---

ORDER

---

(Filed: September 16, 2019)

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)(i), (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: September 16, 2019