

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

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J.C. Nos. 03-19-90067, 03-19-90068

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IN RE: COMPLAINTS 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: January 2, 2020)

PRESENT: SMITH, *Chief Judge*.

These complaints are filed under the Judicial Conduct and Disability Act, 28 U.S.C. §§ 351-64, against a United States District Judge (“Subject Judge I”) and a United States Magistrate Judge (“Subject Judge II”). For the reasons discussed below, the complaints 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 federal prisoner, was a pro se plaintiff in two civil cases before Subject Judges I and II. In both matters, Complainant sought entry of a default judgment

and Subject Judge II's recusal, which Subject Judge II denied. In addition, although Subject Judge II initially granted Complainant permission to proceed *in forma pauperis* in each case, Subject Judge I later granted the Government's motion to revoke that status on grounds that Complainant has "three strikes" under the Prison Litigation Reform Act. After his IFP status was revoked, Complainant did not pay the required filing fees. Accordingly, Subject Judge I dismissed both matters for failure to prosecute. Complainant appealed both dismissals. Complainant voluntarily dismissed one of the appeals. The second appeal remains pending.

These complaints of judicial misconduct allege that Subject Judges I and II permitted the Government to "file[] several motions in violation of the law," including the motions to revoke Complainant's IFP status. Complainant further alleges that the Subject Judges' actions "help[ed] the defendants win the case." Complainant claims that the Subject Judges failed to act impartially and that this constitutes "a miscarriage of justice."

Complainant's allegations challenge the merits of decisions and rulings rendered by Subject Judges I and II, including the orders revoking Complainant's IFP status. These allegations therefore do not constitute cognizable misconduct under the Judicial Conduct and Disability Act. Rule 4(b)(1), *Rules for Judicial-Conduct and Judicial-Disability Proceedings* ("Cognizable misconduct does not include an allegation that calls into question the correctness of a judge's ruling, including a failure to recuse."). All such non-cognizable allegations are 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*.

To the extent Complainant's claims of partiality are not based solely on his disagreement with the merits of the Subject Judges' decisions, they are unsupported. A careful review of the record reveals no evidence to substantiate Complainant's subjective belief that the Subject Judges were acting to "help" the Government. Accordingly, these allegations 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*.

Based on the foregoing, these complaints will be dismissed pursuant to 28 U.S.C. § 352(b)(1)(A)(ii) and (iii). Complainant previously filed a complaint of judicial misconduct that was dismissed as merits-related, unsupported, and frivolous. *See* J.C. No. 03-19-90006. Complainant's attention is therefore 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 pursuant to this provision.

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<sup>1</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.

s/ D. Brooks Smith  
Chief Judge

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ORDER

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(Filed: January 2, 2020)

PRESENT: SMITH, *Chief Judge*.

On the basis of the foregoing opinion entered on this date, it is ORDERED AND ADJUDGED that the written complaints brought pursuant to 28 U.S.C. § 351 are 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: January 2, 2020