

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

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J.C. Nos. 03-20-90087, 03-20-90088, 03-20-90089

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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: February 17, 2021)

PRESENT: SMITH, *Chief Judge*.

This complaint is filed under the Judicial Conduct and Disability Act, 28 U.S.C. §§ 351-64, against three United States Circuit Judges (“Subject Judge I,” “Subject Judge II,” and “Subject Judge III”). 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).

In 2017, Complainant filed a pro se appeal from a District Court order granting summary judgment to the defendant in Complainant’s employment discrimination

proceeding. The appeal was assigned to a panel comprised of Subject Judges I, II, and III. The Subject Judges affirmed the District Court’s judgment, the Court of Appeals denied en banc rehearing, and the mandate issued. Complainant moved to recall the mandate in order to correct the opinion. The Subject Judges denied the motion to recall the mandate as well as Complainant’s subsequent motion for reconsideration of the denial.

In the present complaint, Complainant alleges that the Subject Judges should not have affirmed the entry of summary judgment against him by the District Court and that the Subject Judges’ decision “showed that my documents were not considered at all.”<sup>1</sup> It is evident that Complainant seeks to dispute the merits of the Subject Judges’ decision. Indeed, Complainant made similar allegations in two prior unsuccessful complaints of judicial misconduct naming the same Subject Judges. *See* J.C. Nos. 03-19-90054, 03-19-90055, 03-19-90056, 03-20-90011, 03-20-90012, 03-20-90013. Allegations disputing the merits of judicial rulings do not constitute cognizable misconduct under the Judicial Conduct and Disability Act. “Cognizable misconduct does not include an allegation that calls into question the correctness of a judge’s ruling . . . .” Rule 4(b)(1), *Rules for Judicial-Conduct and Judicial-Disability Proceedings*. Merits-related allegations are not cognizable as misconduct because the “misconduct procedure [under the Act] is not designed as a substitute for, or supplement to, appeals or motions for reconsideration. Nor

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<sup>1</sup> Complainant also makes allegations concerning the putative actions of the defendant and counsel in his unsuccessful civil suit. Only federal judges, however, are covered by the Judicial Conduct and Disability Act. Accordingly, Complainant’s allegations against the defendant and counsel will not be addressed in this proceeding. 28 U.S.C. § 352(b)(1)(A)(i); Rule 1, *Rules for Judicial-Conduct and Judicial-Disability Proceedings*.

is it designed to provide an avenue for collateral attacks or other challenges to judges' rulings." *In re Memorandum of Decision of Judicial Conference Committee on Judicial Conduct and Disability*, 517 F.3d 558, 561 (U.S. Jud. Conf. 2008). Thus, 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 that Complainant's allegations of misconduct are not based solely on his disagreement with the merits of the Subject Judges' decision, they are unsubstantiated. The record has been reviewed and there is no evidence of misconduct on the part of the Subject Judges. Complainant's remaining 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 above, this complaint will be dismissed under 28 U.S.C. § 352(b)(1)(A)(i), (ii), and (iii). As noted previously, Complainant has filed two other complaints against the same three Subject Judges containing repetitive, merits-related, and frivolous allegations of judicial misconduct. In addition, Complainant was cautioned in a prior matter pursuant to Rule 10, *Rules for Judicial-Conduct and Judicial-Disability Proceedings*, that future abuse of the judicial misconduct complaint procedure could result in the imposition of restrictions.<sup>2</sup> Nonetheless, Complainant proceeded to file the present

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<sup>2</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

complaint. Accordingly, I hereby direct that a copy of this opinion be transmitted to the Judicial Council for consideration of the issuance of an order to show cause why Complainant should not be enjoined from filing further complaints under the Judicial Conduct and Disability Act.

s/ D. Brooks Smith  
Chief Judge

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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: February 17, 2021)

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: February 17, 2021