

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

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J.C. Nos. 03-21-90015, 03-21-90016, 03-21-90017, 03-21-90018

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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: March 29, 2021)

PRESENT: SMITH, *Chief Judge*.

This complaint is filed under the Judicial Conduct and Disability Act, 28 U.S.C. §§ 351-64, against two United States Court of Appeals Judges (“Subject Judge I” and “Subject Judge II”), a United States District Judge (“Subject Judge III”), and a United States Magistrate Judge (“Subject Judge IV”).<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

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<sup>1</sup> The complaint lists a retired judge, a deceased judge, and individuals who are not federal judges. The complaint was not accepted for filing as to these individuals as they are not covered by the Judicial Conduct and Disability Act. 28 U.S.C. §§ 351(a), 352(b)(1)(A)(i); Rule 1(b), *Rules for Judicial-Conduct and Judicial-Disability Proceedings*.

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 this complaint of judicial misconduct, Complainant alleges that Subject Judges I and II retaliated against him for his “same sex sexual harassment complaint.”

Complainant also alleges that Subject Judges III and IV were “stalking him” in two different locations.

Complainant’s allegations are difficult to understand. To the extent Complainant seeks to collaterally attack decisions made in a prior appeal by Subject Judges I and II, his allegations are merits-related allegations and do not constitute cognizable misconduct.

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.”). 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 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). In any event, the docket for the case cited by Complainant has been reviewed and in that matter the Subject Judges directed the District Court to grant Complainant *in forma pauperis* status.

Accordingly, such 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 the allegations of the complaint are not merits-related, they are unsubstantiated. Attached to the complaint are copies of decisions issued by panels of Fourth Circuit Judges, correspondence that is mostly illegible and not relevant to his present allegations, a copy of a credit report, and a copy of executive clemency regulations. Complainant offers nothing to substantiate his claims of retaliation and stalking. Accordingly, Complainant's non-merits-related allegations are 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)(i), (ii), and (iii).

s/ D. Brooks Smith  
Chief Judge

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ORDER

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(Filed: March 29, 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: March 29, 2021