

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

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J.C. Nos. 03-21-90042, 03-21-90043

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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: September 14, 2021)

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 (“Subject Judge I”) and a United States Magistrate Judge (“Subject Judge II”). 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).

More than fifteen years ago, a jury found Complainant and several co-defendants guilty of drug-related crimes. The presiding District Judge<sup>1</sup> sentenced Complainant to a substantial term of imprisonment. Complainant has since served his sentence. About five years ago, the Government filed a motion seeking to use funds that had been seized from a co-defendant to pay that co-defendant's fines and assessments. Subject Judge II granted the motion.

In this complaint of judicial misconduct, Complainant alleges that, when he and his co-defendants were tried and convicted, the Government took the position that the seized funds were "serialized and pre-recorded FBI money" employed by a confidential informant. According to Complainant, the Government's recent treatment of a similar amount of money as belonging to Complainant's co-defendant rather than to the Government demonstrates that the Government "practiced fraud upon the Federal Court" and engaged in "money laundering," and thereby obtained Complainant's and his co-defendants' wrongful convictions. Complainant accuses Subject Judges I and II of "hiding" the alleged fraud and participating in a "clear conspiracy to abort justice and hide crimes and civil rights abuses."

It is apparent that Complainant is attempting to collaterally attack the basis for his and his co-defendants' criminal convictions. Indeed, Complainant has filed a petition for a writ of coram nobis raising the same allegations, which remains before the Subject Judges. To the extent Complainant challenges the merits of his conviction, the allegations

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<sup>1</sup> The presiding District Judge has since retired and is not named as a Subject Judge of this complaint. The matter was reassigned to Subject Judge I about ten years ago.

are merits-related 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.”). “The misconduct procedure [under the Judicial Conduct and Disability 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). Complainant’s merits-related 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*.

To the extent they are not merits-related, the allegations of conspiracy and fraud on the part of the Subject Judges are unsupported. Complainant alleges wrongdoing on the part of the individuals who investigated and prosecuted him, not the Subject Judges.<sup>2</sup> Although Complainant has appended substantial documentation to his complaint, nothing in those documents demonstrates that the Subject Judges participated in any alleged conspiracy. Accordingly, the allegations are subject to dismissal as unsupported by evidence that would raise an inference that misconduct has occurred. 28 U.S.C.

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<sup>2</sup> FBI agents and prosecuting attorneys are not federal judges and therefore are not subject to the Judicial Conduct and Disability Act. *See* 28 U.S.C. § 351(d); Rule 4, *Rules for Judicial-Conduct and Judicial-Disability Proceedings*. Accordingly, to the extent Complainant alleges misconduct on the part of such individuals, the allegations will not be addressed in this opinion. *See* 28 U.S.C. §§ 351, 352(b)(1)(A)(i).

§ 352(b)(1)(A)(iii); Rule 11(c)(1)(D), *Rules for Judicial-Conduct and Judicial-Disability Proceedings*.

Based on the foregoing, the 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: September 14, 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: September 14, 2021