

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

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J.C. Nos. 03-23-90105, 03-23-90106, 03-23-90107,  
03-23-90108, 03-23-90109, 03-23-90110, 03-23-90111, 03-23-90112, 03-23-90113

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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: October 27, 2023)

PRESENT: JORDAN, Circuit Judge.<sup>1</sup>

This complaint is filed under the Judicial Conduct and Disability Act, 28 U.S.C. §§ 351-64, against two United States District Judges (Subject Judges I and IV), a United States Magistrate Judge (Subject Judge III), and six United States Circuit Judges (Subject Judges II, V, VI, VII, VIII, and IX).<sup>2</sup> For the reasons that follow, the complaint will be dismissed.

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<sup>1</sup> Acting pursuant to Rule 25(f), Rules for Judicial-Conduct and Judicial-Disability Proceedings (“If the chief judge is disqualified . . . those duties must be assigned to the most-senior active circuit judge not disqualified.”).

<sup>2</sup> Complainant also named former United States District and Magistrate Judges, state court judges, and a county prosecutor, but those persons are not subject to the Act. See Rule 1, Rules for Judicial-Conduct and Judicial-Disability Proceedings; 28 U.S.C. § 352(b)(1)(A)(i). Accordingly, the complaint was not accepted for filing for those persons and any allegations Complainant attempted to make against them will not be considered here. Likewise, to the extent that Complainant has sought to compel action by the Court Clerk with respect to what he has termed “prejudicial documents,” or to

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 filed unsuccessful federal lawsuits related to his termination from the Federal Bureau of Investigation and to his arrest and state conviction for harassment of a federal magistrate judge. On appeal, the Court of Appeals affirmed both judgments. (One of those affirmances was issued after Complainant filed these proceedings.) Complainant filed this judicial misconduct complaint naming judges who presided over portions of the District Court cases and two appeals. The other named judges are Chief Judges for those courts (Subject Judges IV and II).

Much of Complainant’s judicial misconduct complaint is comprised of lengthy, repetitive passages explaining Complainant’s view of the facts and procedural history of his cases. He is largely attempting to collaterally challenge official judicial actions in the underlying proceedings. For example, among his allegations of wrongdoing, Complainant contends that the Subject Judges erroneously failed to serve complaints and summonses (Subject Judge III), denied motions for appointment of counsel (Subject Judges I, III, V,

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challenge the non-participation of the United States Attorney’s office in his appeal, there is no authority under the Act to lodge or consider such requests in these judicial misconduct proceedings.

VI, VII, and IX), did not effectuate a settlement (Subject Judge I), and issued incorrect rulings such as those concerning the application of judicial immunity (Subject Judges V, VI, VII, VIII, and IX) and his re-litigation of prior matters (Subject Judges V, VI, VII, VIII, and IX). Yet, these claims are merits-related and do not constitute cognizable conduct. See 28 U.S.C. § 352(b)(1)(A)(ii); Rule 4(b)(1), Rules for Judicial-Conduct and Judicial-Disability Proceedings. 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 claims will therefore be dismissed. See Rule 11(c)(1)(B), Rules for Judicial-Conduct and Judicial-Disability Proceedings.

To the extent that Complainant argues that Subject Judge I was biased against him or made misleading and bad faith comments, these claims will be dismissed as frivolous and unsupported by any evidence that would raise an inference that misconduct occurred. See 28 U.S.C. § 352(b)(1)(A)(iii); Rule 11(c)(1)(C), (D), Rules for Judicial-Conduct and Judicial-Disability Proceedings. The underlying record has been reviewed, including all documents and events referenced by Complainant, and there is no evidence of bias or bad faith of any kind.<sup>3</sup> He also complains that Subject Judge I delayed the adjudication of his

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<sup>3</sup> Complainant submitted unsworn correspondence prior to filing this formal complaint under 28 U.S.C. § 351. The allegations raised in those submissions have been considered under Rule 5 of the Rules for Judicial-Conduct and Judicial-Disability Proceedings, but no

employment discrimination action, but this “delay” claim is not cognizable and subject to dismissal. See Rules 4(b)(2) (cognizable misconduct does not include “an allegation about delay in rendering a decision or ruling, unless the allegation concerns an improper motive in delaying a particular decision or habitual delay in a significant number of unrelated cases”), 11(c)(1)(B), Rules for Judicial-Conduct and Judicial-Disability Proceedings. Complainant has not clearly alleged an improper motive by Subject Judge I for the purported delay; in any event, the active case docket, filings, and transcripts reflect that Complainant was responsible for submitting numerous requests, motions, letters, and other filings, which often necessitated time-consuming responses from the defendants and/or rulings by the Court. Crucially also, Subject Judge I afforded Complainant multiple opportunities to amend his complaint because his first several attempts did not comply with the Federal Rules of Civil Procedure. Complainant’s allegation related to a putative delay is thus also subject to dismissal as frivolous and unsubstantiated. See 28 U.S.C. § 352(b)(1)(A)(iii); Rule 11(c)(1)(C), (D), Rules for Judicial-Conduct and Judicial-Disability Proceedings.

Complainant also includes other non-cognizable, frivolous, and unsupported claims that are subject to dismissal. He asserts that “prejudicial documents”—allegedly, bulletins containing his information posted at the security stations in some federal courthouses during the pendency of his first lawsuit—impacted his employment discrimination case

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complaint was identified because the claims are likewise merits-related and frivolous. See 28 U.S.C. § 352(b)(1)(A)(ii),(iii); Rules 4(b)(1), 11(c)(1)(C), (D), Rules for Judicial-Conduct and Judicial-Disability Proceedings.

because the judges supposedly knew about them and were biased against him as a result. He also contends that the appellate Subject Judges committed misconduct because the Court “allowed notices of appearances from U.S. Attorney’s Offices [in the locations the bulletins were posted].” If his complaint is read as intending to protest the posting of such notices, the claim is subject to dismissal because it does not allege misconduct by a judge subject to the Act. See Rules 1(b), 4(a), Rules for Judicial-Conduct and Judicial-Disability Proceedings. Further, to the extent he maintains that Subject Judges somehow knew about and were adversely influenced by such a bulletin, his claim is unsubstantiated and mere speculation. As such, it must be dismissed as frivolous and lacking evidence to support an inference of misconduct. See 28 U.S.C. § 352(b)(1)(A)(iii); Rule 11(c)(1)(C), (D), Rules for Judicial-Conduct and Judicial-Disability Proceedings.

Complainant’s recent correspondence indicates that he disagrees with the Court of Appeals’ recently-issued affirmance in his second appeal, and that he “reject[s]” the “unenforceable [and] invalid” opinion and order. These concerns are clearly merits-related and not cognizable in these proceedings. See 28 U.S.C. § 352(b)(1)(A)(ii); Rule 4(b)(1), Rules for Judicial-Conduct and Judicial-Disability Proceedings. The Judicial Conduct and Disability Act neither provides an avenue for appeal of that decision nor authorizes enjoining the Court of Appeals or any other court from issuing a ruling. Further, while he alleges a “disability” with respect to Subject Judges VI, VIII, and IX, he has submitted no evidence to support his accusations. Accordingly, in addition to being non-cognizable, the concerns raised in his correspondence are further subject to dismissal

as frivolous and unsupported. See 28 U.S.C. § 352(b)(1)(A)(iii); Rule 11(c)(1)(C), (D), Rules for Judicial-Conduct and Judicial-Disability Proceedings.

Given the repetitive, frivolous, and merits-related nature of Complainant's current allegations, Complainant's attention is directed to Rule 10(a), Rules for Judicial-Conduct and Judicial-Disability Proceedings.<sup>4</sup> Complainant is strongly cautioned that filing further frivolous, unsubstantiated, and merits-related complaints may result in the imposition of restrictions under this Rule.

Kent A. Jordan  
Circuit Judge

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<sup>4</sup> Rule 10(a), Rules for Judicial-Conduct and Judicial-Disability Proceedings, states:

(a) **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.

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ORDER

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(Filed: October 27, 2023)

PRESENT: JORDAN, Circuit 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).

Kent A. Jordan  
Circuit Judge

Dated: October 27, 2023