

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

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J.C. No. 03-15-90092

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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: April 8, 2016)

PRESENT: McKEE, Chief Judge.

This is a complaint filed under the Judicial Conduct and Disability Act, 28 U.S.C. §§ 351-64, against a United States District Judge (hereinafter “Subject Judge”). For the reasons discussed below, the complaint will be dismissed.<sup>1</sup>

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

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<sup>1</sup> Complainant also makes allegations of misconduct concerning individuals and entities not subject to the Judicial Conduct and Disability Act; e.g., attorneys, individual defendants, a law firm, and a business entity. See 28 U.S.C. §§ 351, 352(b)(1)(A)(i); Rule 4, Rules for Judicial-Conduct and Judicial-Disability Proceedings. These allegations will not be addressed in this opinion.

raise an inference of misconduct. 28 U.S.C. §§ 352(b)(1)(A)(i)-(iii). 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).

Complainant alleges that the Subject Judge engaged in “extensive interactions and significant suspicious financial transactions” with named shareholders of a law firm which was a defendant in Complainant’s civil action pending before the Subject Judge.<sup>2</sup>

Complainant’s primary support for these speculative allegations is his own internet research. For example, Complainant alleges that the Subject Judge and a named shareholder at the defendant law firm made donations around the same time to the same opera organizations. Complainant further speculates that “the judge and his wife enjoy cross country opera trips possibly paid for by [the shareholder], and attend fund raising galas with partners of a law firm that is also a party to litigation before the court.”

Complainant also contends that the Subject Judge engaged in judicial misconduct because he did not disclose that one of his former law clerks was the daughter of a named shareholder at the defendant law firm. In addition, Complainant complains that the

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<sup>2</sup> Complainant’s allegations concern the Subject Judge’s alleged actions in three law suits. Attorneys from the law firm in question – but not any of the named shareholders – represented parties in one of the lawsuits. The law firm itself was a defendant in another of the three lawsuits.

Subject Judge and shareholders of the defendant law firm participated in the same Inn of Court association. Based on these alleged relationships, Complainant complains that the Subject Judge has not recused himself and seeks his disqualification, as well as the vacatur of several orders. An allegation, however, that “calls into question the correctness of a judge’s ruling, including a failure to recuse, without more, is merits-related.” Rule 3(h)(3)(A), Rules for Judicial-Conduct and Judicial-Disability Proceedings. Merits-related allegations are not cognizable under the Judicial Conduct and Disability Act. See 28 U.S.C. § 352(b)(1)(A)(ii) (chief judge may dismiss a complaint if he or she finds that it is directly related to the merits of a decision or procedural ruling); Rule 11(c)(1)(B), Rules for Judicial-Conduct and Judicial-Disability Proceedings (a complaint must be dismissed in whole or in part to the extent that the chief judge concludes that the complaint is directly related to the merits of a decision or procedural ruling). To the extent Complainant seeks to collaterally attack the Subject Judge’s refusal to recuse himself or any of his rulings, his complaint is dismissed.

Moreover, Complainant’s allegations are subject to dismissal as frivolous and “lacking sufficient evidence to 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. Indeed, Complainant appealed the Subject Judge’s orders denying his motion to recuse and dismissing his complaint, but a Third Circuit panel summarily affirmed the Subject Judge’s orders. Complainant’s appellate filings made the same

allegations of judicial impropriety as his complaint of judicial misconduct and unsuccessful recusal motion.<sup>3</sup> The Third Circuit panel concluded that the Subject Judge did not abuse his discretion in denying the motion to recuse, reasoning:

Typically, a judge need not recuse merely because he or she is friends with an attorney in the case . . . Any potential bias here was mitigated by the fact that [the named shareholder] was not involved in any way in this case . . . While [Complainant] presents additional (and irresponsible) allegations – such as that the District Judge and [the shareholder] conspired to have [Complainant] evicted from his home – these types of “unsubstantiated allegations” provide no support for his motion.

(citations omitted). The panel also addressed the allegation concerning the law clerk, stating that if a clerk “has a possible conflict of interest, it is the clerk, not the judge, who must be disqualified.” The panel further observed that there is “no suggestion that this law clerk worked on any part of this case.” Notably, in the course of the appeal, attorneys from the defendant law firm categorically denied that any attorneys from the firm paid for the Subject Judge’s opera tickets or travel expenses or made donations on his behalf. In the absence of any evidence of judicial misconduct, Complainant’s “irresponsible” and “unsubstantiated” allegations of judicial misconduct are dismissed as frivolous and “lacking sufficient evidence to raise an inference that misconduct has occurred . . .” 28

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<sup>3</sup> In view of the overlap between the allegations made in the appellate and misconduct proceedings, action on Complainant’s complaint of judicial misconduct was deferred until the conclusion of Complainant’s appeal. Commentary on Rule 3 (“there may be occasions when appellate and misconduct proceedings overlap, and consideration and disposition of a complaint under these Rules may be properly deferred by the chief judge until the appellate proceedings are concluded in order to avoid, *inter alia*, inconsistent decisions”). Complainant’s petition for rehearing by the panel and the Court en banc was denied.

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

Finally, Complainant alleges that the Subject Judge and his wife donated money to democratic candidates and speculates that the Subject Judge ruled against him in “multiple proceedings” to prevent harm to his former law clerk who now works for a current presidential candidate. This allegation is frivolous and lacking in any evidence that would raise an inference that misconduct has occurred. *Id.* Furthermore, the website cited by Complainant in support of this allegation lists only the Subject Judge’s wife as a donor to the political party in question.

For the foregoing reasons, the complaint is dismissed pursuant to 28 U.S.C. § 352(b)(1)(A)(i), (ii), and (iii).

s/ Theodore A. McKee  
Chief Judge

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ORDER

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(Filed: April 8, 2016)

PRESENT: McKEE, 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/ Theodore A. McKee  
Chief Judge

Dated: April 8, 2016