

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

---

J.C. No. 03-15-90080

---

IN RE: COMPLAINT OF JUDICIAL MISCONDUCT  
OR DISABILITY

---

ORIGINAL PROCEEDINGS UNDER 28 U.S.C. § 351

---

MEMORANDUM OPINION

---

(Filed: October 9, 2015)

PRESENT: McKEE, 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 (the “Subject Judge”). 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).

Nearly fifteen years ago, Complainants, a married couple, filed a civil complaint in state court against two companies concerning injuries suffered by the wife as a result of

her use of allegedly defective exercise equipment. The defendants removed the matter to District Court and the case eventually was assigned to the Subject Judge. Just before trial, Complainants withdrew their claims against one defendant. The remaining claims proceeded to trial. The jury entered a verdict in favor of the remaining defendant. The Subject Judge entered judgment accordingly and closed the case. Complainants did not appeal and the matter has been closed for more than a decade.<sup>1</sup>

This complaint of judicial misconduct is comprised of documentary exhibits, including court documents, correspondence, and legal bills, annotated with handwritten notes. Although the handwritten notes are incomplete, disjointed, and unclear, it appears the complaint is primarily focused on Complainants' dissatisfaction with the services of their former attorney. It further appears that, after the representation ended, Complainants and the attorney engaged in a series of legal disputes concerning the attorney's fees. In addition, Complainants allege that the attorney failed to present certain evidence to the jury and that other evidence was "altered." With regard to the Subject Judge, they state, without further elaboration, that the Subject Judge was "implicated in this conspiracy."

Although Complainants purport to allege misconduct on the part of their former attorney, a private attorney is not covered by the Judicial Conduct and Disability Act or by the Rules for Judicial-Conduct and Judicial-Disability Proceedings. Rule 4, Rules for

---

<sup>1</sup> Among the exhibits to the complaint of judicial misconduct is a document that appears to be a notice of appeal bearing a District Court "received" stamp within 30 days of the judgment entered in Complainants' case. Although this document does not appear in the District Court's docket entries, the District Court's docket reflects that, later the same month, Complainants filed a letter-motion seeking to terminate the appeal.

Judicial-Conduct and Judicial-Disability Proceedings (a complaint filed under the Rules “may concern the actions or capacity **only of judges** . . . .” (emphasis added)). Because the privately retained attorney is not a judge, any allegations concerning his fees, the quality of his representation, or any other allegedly inappropriate conduct will not be addressed in this opinion. See 28 U.S.C. §§ 351, 352(b)(1)(A)(i); Rule 4, Rules for Judicial-Conduct and Judicial-Disability Proceedings.

In addition, to the extent the complaint is intended to raise disputes with the evidence presented during their trial or the trial’s outcome, such allegations are merits-related. Rule 3(h)(3)(A), Rules for Judicial-Conduct and Judicial-Disability Proceedings (“An allegation that calls into question the correctness of a judge’s ruling, including a failure to recuse, without more, is merits-related.”). Merits-related allegations do not constitute cognizable judicial misconduct. See 28 U.S.C. § 352(b)(1)(A)(ii); Rules 3(h)(3)(A), 11(c)(1)(B), Rules for Judicial-Conduct and Judicial-Disability Proceedings.

Indeed, the final page of the complaint states that “12 years of appeals is outrageous.” This misconduct proceeding is not an appeal. 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). Accordingly, Complainant’s merits-related allegations are dismissed. See 28 U.S.C.

§ 352(b)(1)(A)(ii); Rules 3(h)(3)(A), 11(c)(1)(B), Rules for Judicial-Conduct and Judicial-Disability Proceedings.

Finally, Complainants provide no meaningful explanation as to why they allege the Subject Judge was involved in a “conspiracy.” The record reflects no evidence of impropriety and does not give rise to an inference of misconduct. Accordingly, Complainants’ remaining allegations are dismissed as frivolous and unsupported by 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.

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

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

---

J.C. No. 03-15-90080

---

IN RE: COMPLAINT OF JUDICIAL MISCONDUCT  
OR DISABILITY

---

ORIGINAL PROCEEDINGS UNDER 28 U.S.C. § 351

---

ORDER

---

(Filed: October 9, 2015)

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 clerk of the court of appeals within **35 days** of the date on the clerk's letter informing the parties of the chief judge's order.

18(b) Form. The petition should be in letter form, addressed to the clerk of the court of appeals, 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 Clerk’s Office of the Court of Appeals for the Third Circuit and on the Court of Appeals’ internet site, [www.ca3.uscourts.gov](http://www.ca3.uscourts.gov).

s/ Theodore A. McKee  
Chief Judge

Dated: October 9, 2015