

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

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J.C. No. 03-16-90090

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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: May 8, 2017)

PRESENT: SMITH, *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 ( 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).

The Subject Judge presided over a civil action brought by a small company against a private university, a large company, and others, in which the small company brought claims of breach of contract, misappropriation of trade secrets, RICO violations, and other

related claims. After discovery, the defendants moved for summary judgment. Months after the dispositive motions were briefed, plaintiff's counsel moved to withdraw as counsel, on grounds that his client directed him to act in a manner he found to be "repugnant" and in violation of the rules of professional conduct. The Subject Judge entered summary judgment in favor of the defendants, denied counsel's withdrawal motion as moot, and closed the case. The plaintiff did not appeal.

Complainant, who was not a litigant in the civil action and does not disclose his relationship to that case, claims that the Subject Judge "engaged in unethical conduct adversely affecting public confidence in the judicial system" in the course of that proceeding. Specifically, Complainant alleges that the Subject Judge "knowingly engaged in conflicts of interest that should have disqualified him from hearing the case."

Complainant describes two alleged conflicts of interest. First, Complainant alleges that the Clerk of the District Court is married to an attorney who has represented the large company defendant in other matters. In support of this claim, Complainant appends to his complaint a copy of an "attorney ethics grievance form," which the CEO of the plaintiff company apparently filed against the Clerk's wife and which presents similar allegations. Second, Complainant alleges that the Subject Judge has "close ties" to an individual who, according to Complainant, was the former head of a corporation that victimized the plaintiff company, although that corporation was not named as a defendant in the civil action.

While Complainant contends that these allegations demonstrate that the Subject Judge's recusal was warranted, it is apparent that the parties to the civil action never filed a recusal motion. A motion seeking recusal must be presented to the presiding judge in the first instance. Moreover, any substantive decision rendered on such a motion would be merits-related. See Rule 3(h)(3)(A), *Rules for Judicial-Conduct and Judicial-Disability Proceedings* (“[a]n 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 misconduct 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). Accordingly, these allegations are subject to dismissal.

Moreover, even if Complainant’s allegations were to be credited, they do not give rise to a reasonable inference that misconduct has occurred. The indirect and tenuous connections that Complainant describes between the Subject Judge and individuals who allegedly may have relationships with some of the parties appearing before the Subject Judge in the civil action do not, without more, reasonably call into question the Subject Judge’s impartiality. See, e.g., Canon 3(C), Code of Conduct for United States Judges

(concerning disqualification).<sup>1</sup> Accordingly, these allegations are also 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*.

Complainant further alleges that the Subject Judge “acted in concert with the defense counsel’s collective efforts to scuttle the [small company’s civil action] by failing to address the ethical and criminal misconduct of [the small company’s] attorneys.” Complainant contends that the attorneys poorly represented the small company – as evidenced by “the inadequate nature of discovery, poorly prepared pleadings, the actions of the attorneys themselves to delay further movement on the cases [*sic*] and reports [the Subject Judge] was receiving from various defense counsels in the case.” Complainant points to plaintiff counsel’s motion to withdraw as “one particularly egregious example,” and contends that the Subject Judge wrongfully “allowed [the attorney] to withdraw from the case on a false claim of ‘repugnancy’ without any objective inquiry or investigation whatsoever.”

Complainant misapprehends the Subject Judge’s disposition of counsel’s motion to withdraw. The Subject Judge did not grant that motion; rather, he denied it as moot upon

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<sup>1</sup> The Code of Conduct for United States Judges is designed to provide guidance to judges, but is not a set of disciplinary rules. “Ultimately, the responsibility for determining what constitutes misconduct under the statute is the province of the judicial council of the circuit subject to such review and limitations as are ordained by the statute and by these Rules.” Commentary on Rule 3, *Rules for Judicial-Conduct and Judicial-Disability Proceedings*.

entering summary judgment in favor of the defendants. Moreover, Complainant's disagreement with the Subject Judge's decision is a merits-related dispute that is not cognizable as judicial misconduct. Accordingly, Complainant's allegations concerning that motion will be dismissed. *See* 28 U.S.C. §§ 352(b)(1)(A)(ii), (iii); Rule 11(c)(1)(B), (C), (D), *Rules for Judicial-Conduct and Judicial-Disability Proceedings*.

More generally, Complainant's contention that the Subject Judge "knew or certainly should have known" that plaintiff's retained counsel was engaged in malpractice is patently frivolous. The record contains no objective evidence of "ethical or criminal misconduct," nor does it indicate that the plaintiff was dissatisfied with the counsel of its choice while litigation was ongoing. Complainant's personal assessment that counsel's performance was deficient, without more, does not provide a basis for concluding that the Subject Judge should have inserted himself into the plaintiff's attorney-client relationship without being requested to do so. Accordingly, these allegations are subject to dismissal as frivolous and unsupported by evidence that would raise an inference that misconduct has occurred.<sup>2</sup> 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, the complaint will be dismissed pursuant to 28 U.S.C. §§ 352(b)(1)(A)(i), (ii), and (iii).

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<sup>2</sup> Any alleged misconduct on the part of plaintiff's retained counsel is beyond the scope of this proceeding and 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*.

s/ D. Brooks Smith

Chief Judge

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

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ORDER

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(Filed: May 8, 2017)

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: May 8, 2017