

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. Nos. 03-17-90061 and 03-17-90062

IN RE: COMPLAINTS OF JUDICIAL MISCONDUCT
OR DISABILITY

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

MEMORANDUM OPINION

(Filed: October 13, 2017)

PRESENT: SMITH, *Chief Judge*.

These two complaints are filed under the Judicial Conduct and Disability Act, 28 U.S.C. §§ 351-64, against a United States District Judge and a United States Magistrate Judge (“Subject Judge I” and “Subject Judge II”). For the reasons discussed below, the complaints will be dismissed.¹

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

¹ Complainants also make allegations concerning individuals who are not covered by the Judicial Conduct and Disability Act; i.e., counsel for defendants, defendants, and Complainants’ former attorney. Accordingly, these allegations 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*.

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).

Complainants were plaintiffs in a four-day trial before Subject Judge I and a jury found for defendants on all claims. Complainants' counsel withdrew following the trial and Complainants proceeded *pro se* with a direct appeal. A panel of Third Circuit Court of Appeals judges affirmed the District Court's judgment. Thereafter, Complainants filed a motion pursuant to Federal Rule of Civil Procedure 60(b)(6). Subject Judge I denied the motion and Complainants appealed. Again, a panel of Third Circuit Court of Appeals judges affirmed the judgment of the District Court. In the meantime, Complainants filed a civil suit against individuals involved with the first lawsuit.² This second civil suit was assigned to Subject Judge I and Subject Judge II. Complainants filed a recusal motion that Subject Judge I denied. Subject Judge I also denied a motion for reconsideration of her order denying the recusal motion. Complainants thereafter filed a petition for a writ of mandamus seeking review of the denial of the recusal motion. A Third Circuit panel denied the petition for writ of mandamus.³

² Subject Judge I recently issued an order dismissing this civil suit.

³ Complainants have filed several appeals that were dismissed for lack of jurisdiction. In addition, Complainants recently filed another petition for writ of mandamus. This mandamus petition sought a stay of all proceedings in the District Court pending the resolution of a petition for rehearing en banc and the present separate administrative proceedings under the Judicial Conduct and Disability Act. Complainants also filed a stay motion in the District Court proceedings. Both the petition for rehearing en banc and stay motion were denied.

In their complaints of judicial misconduct, Complainants allege that Subject Judge I should have recused herself and granted their post-judgment motions. Complainants further complain that Subject Judge II should have granted Complainants' motion for sanctions and that Subject Judge II "ignored" her judicial duty when she wrote a Report and Recommendation at the "direction of" Subject Judge I. Complainants also complain about Subject Judge II's conclusions and statements in her order denying their motion for sanctions. It is clear that Complainants' allegations are primarily merits-related, reflecting their fundamental disagreement with the Subject Judges' decisions in their civil actions. "An allegation 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 do not constitute cognizable misconduct under the Judicial Conduct and Disability Act. *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*. 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, Complainants' merits-related allegations are subject to dismissal.

In any event, most of Complainants' allegations are also subject to dismissal on the grounds that they are frivolous and/or unsupported by any evidence that would raise an inference that misconduct has occurred. Indeed, many of Complainants' allegations were already addressed by three separate panels of Third Circuit Court of Appeals judges. On direct appeal, a Third Circuit panel rejected Complainants' allegations that the attorneys involved in the trial, including Complainants' retained counsel, committed misconduct and were involved in a conspiracy that disadvantaged them. In the context of an appeal from Subject Judge I's order denying a Federal Rule of Civil Procedure 60(b)(6) motion, another panel concluded that the alleged communications between the jury and Subject Judge I's courtroom deputy that were relayed to Complainants' attorney consisted of "seemingly innocuous" feedback and observed that communication between the jury and a courtroom deputy is expected as a matter of course. Another Third Circuit panel denied a petition for writ of mandamus seeking review of Subject Judge I's refusal to recuse herself. In so doing, the Third Circuit panel rejected Complainants' allegations about a putative "undisclosed prior relationship" between Subject Judge I and Complainants' former attorney's law firm. The same panel described the allegations about Subject Judge I's "possible personal knowledge" of defendants as "unsupported and speculative." The panel reiterated, moreover, that Complainants' allegation that Subject Judge I had not adequately addressed communication with court staff amounted to:

nothing more than dissatisfaction with a legal ruling . . . Moreover, as we explained in our opinion affirming the District Court's denial of the Rule 60(b) motion in [another] case, the communications with the jury that the

[Complainants] have deemed “improper” were “seemingly innocuous” and “neither serious, nor improper.”

Complainants’ allegations about Subject Judge II are also meritless. Subject Judge II’s order denying Complainants’ motion for sanctions has been reviewed and it does not contain any statements indicative of judicial misconduct. Accordingly, Complainants’ allegations of judicial misconduct are subject to dismissal as frivolous and unsupported by any 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*.

Finally, Complainants appear to allege that the Subject Judges have exhibited improper ethnic or religious bias and that Subject Judge II is “protecting” Subject Judge I. Complainants’ only support for these allegations are the same claims that have already been addressed above. In any event, the record has been reviewed and there is no evidence to support these allegations. These allegations are dismissed 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*.

Based on the foregoing, these complaints 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

(Filed: October 13, 2017)

PRESENT: SMITH, *Chief Judge*.

On the basis of the foregoing opinion entered on this date, it is ORDERED AND ADJUDGED that the written complaints brought pursuant to 28 U.S.C. § 351 are 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.

s/ D. Brooks Smith

Chief Judge

Dated: October 13, 2017