

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. Nos. 03-13-90028, 03-13-90029

IN RE: COMPLAINTS OF JUDICIAL MISCONDUCT
OR DISABILITY

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

MEMORANDUM OPINION

(Filed: June 13, 2013)

PRESENT: McKEE, Chief Judge.

These complaints are 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 complaints 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).

Complainants, a married couple, filed a pro se civil rights complaint in May 2010 and an amended complaint in August 2010. They raised constitutional claims against the

state, a municipality, a police department, a local court, and other individuals and entities, concerning their arrest in 2009 on charges of theft, conspiracy, and other crimes.¹ The matter was assigned to the Subject Judge. The defendants filed motions to dismiss. In June 2011, the Subject Judge dismissed the complaint with prejudice. Complainants did not appeal.

In their judicial misconduct complaints, Complainants allege they were “dismayed and confused” by the Subject Judge’s decision to dismiss the complaint, “because we believed we had a strong case with irrefutable evidence. . . .” In addition, as a result of the ruling, they contend that they ‘lost our rights to necessary discovery.’”

Clearly, Complainants disagree with the Subject Judge’s decision to dismiss their complaint. “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 are not cognizable judicial misconduct. Id. 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). Complainants’ merits-

¹ Complainants pleaded guilty to the charges in October 2010.

related allegations are therefore 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.

Apart from their merits-related allegations, Complainants allege that, “shortly after” the dismissal of the complaint, “we discovered his relationships and ties with the very defendants in our lawsuit.” Specifically, Complainants observe that the Subject Judge had “5 years tenure in [a local court within the same county as the defendant individuals and entities in their case].” Complainants allege that the Subject Judge had an obligation to disclose his prior service in that court, and they contend that he should have recused himself from their case that on that basis. “Obviously, [the Subject Judge] knew numerous Defendants in said above case. It is without question that a judge should at the very least offer to recuse himself from a proceeding in which he knows defendants or plaintiffs. . . .” Complainants allege that the Subject Judge should not have participated in their case and “firmly believe [his] decision was prejudiced.”

These allegations are based on mere speculation and conjecture. The Subject Judge served on a different court from the court Complainants named in their complaint. Complainants offer nothing whatsoever to substantiate their assumption that the Subject Judge must have known any of the defendants personally. Moreover, even if the Subject Judge is personally acquainted with any defendant, an acquaintanceship, without more, is not a reasonable basis to call into question a Subject Judge’s ability to act impartially. See Canon 3C(1), Code of Conduct for United States Judges (“A judge shall disqualify

himself or herself in a proceeding in which the judge’s impartiality might reasonably be questioned.”).²

The record does not reveal any reasonable basis for questioning the Subject Judge’s impartiality. Notably, the record reflects that the Complainants did not raise any concerns about the Subject Judge’s impartiality while their case was pending.³ Complainants’ sole “evidence” in support of their claim is their disagreement with the Subject Judge’s decision dismissing their complaint, which, as previously discussed, is merits-related. 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. Accordingly, Complainants’ allegations of partiality are subject to dismissal as frivolous and unsupported by 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.

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

/s/ Theodore A. McKee
Chief Judge

² The Code of Conduct for United States Judges 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.

³ If Complainants had concerns, the proper course would have been to file a motion for recusal. A decision on a recusal motion is merits-related and is not cognizable misconduct. See Rule 3(h)(3)(A), Rules for Judicial-Conduct and Judicial-Disability Proceedings.

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ORDER

(Filed: June 13, 2013)

PRESENT: McKEE, 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)(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 of the Court of Appeals within **35 days** of the date on the letter informing the parties of the Chief Judge's order.

18(b) Form. The petition should be in letter form, addressed to the Circuit Executive 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 Office of the Circuit Executive of the Court of Appeals for the Third Circuit and on the Court of Appeals’ internet site, www.ca3.uscourts.gov.

/s/ Theodore A. McKee
Chief Judge

Dated: June 13, 2013