

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. No. 03-14-90007

IN RE: COMPLAINT OF JUDICIAL MISCONDUCT
OR DISABILITY

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

MEMORANDUM OPINION

(Filed: June 5, 2014)

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.

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 “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).

In essence, Complainant contends that the Subject Judge should have recused himself from consideration of an appeal because of a "potential conflict of interest."¹ According to Complainant, before becoming a judge, the Subject Judge worked in the same United States Attorney's office as an attorney who might be related to the attorney who represented the Appellee in Complainant's appeal of an order denying habeas relief. Complainant speculates that these two attorneys are relatives and argues, "[i]f [the Subject Judge] was law partners with a relative of opposing counsel in my appeal, he should have been recused from sitting in the appeal or opposing counsel should have been removed due to the conflict of interest." Complainant does not have any evidence that the attorneys in question are actually related, except for the fact that they share a relatively common last name.

In the first instance, a judge's decision whether or not to recuse is a merits-related decision and is not, therefore, 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 3(h)(3)(A), Rules for Judicial-Conduct and Judicial-Disability Proceedings ("[a]n allegation that calls

¹ The Subject Judge sat by designation on the appeal.

into question the correctness of a judge's ruling, including a failure to recuse, without more, is merits-related"); 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).

Furthermore, as noted above, Complainant's contention that the attorneys in question are related is based on nothing more than speculation in view of the fact that they share the same last name. Thus, the complaint is subject to dismissal on the ground that it is based on allegations lacking sufficient evidence to raise an inference that misconduct has occurred. 28 U.S.C. § 352(b)(1)(A)(iii); Rule 11(c)(1)(D), Rules for Judicial-Conduct and Judicial-Disability Proceedings.

Moreover, even assuming *arguendo* that the two attorneys are related, Complainant's allegation of judicial misconduct would nonetheless fail. Canon 3(C)(1) provides, "A judge shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned" Here, the Subject Judge's impartiality cannot be "reasonably be questioned" because the Subject Judge allegedly worked more than twenty years ago in the same U.S. Attorney's office as a relative of an attorney appearing before him. Furthermore, Canon 3(C)(1)(b) provides that disqualification is warranted when a judge previously practiced law with an attorney who worked on the matter in controversy "during such association." Here, the case cited by Complainant as evidence that the Subject Judge worked in the same office as a putative relative of

opposing counsel concerns a different criminal matter that was entirely unrelated to Complainant's appeal to the Third Circuit. Accordingly, the complaint is also subject to dismissal as frivolous. 28 U.S.C. § 352(b)(1)(A)(iii); Rule 11(c)(1)(C), 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)(ii) and (iii).

s/ Theodore A. McKee
Chief Judge

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ORDER

(Filed: June 5, 2014)

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)(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 5, 2014