

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. No. 03-14-90036

IN RE: COMPLAINT OF JUDICIAL MISCONDUCT
OR DISABILITY

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

MEMORANDUM OPINION

Filed: August 7, 2014

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).

In October 2008, Complainants, a married couple, filed a voluntary Chapter 13 bankruptcy petition. The Standing Chapter 13 Trustee for the District participated in the case. In July 2011, the matter was converted to a Chapter 7 proceeding and, shortly

thereafter, the Chapter 13 Trustee was replaced by a Chapter 7 Trustee. During the course of the bankruptcy proceeding, Complainants filed numerous appeals of the Bankruptcy Judge's decisions to the District Court.¹ The matters were assigned to the Subject Judge, who consolidated them into a single proceeding and, in January 2012, denied the appeals. Complainants appealed. The Court of Appeals dismissed the appeal in part for lack of jurisdiction and otherwise summarily affirmed the Subject Judge's judgment. Complainants also moved for reconsideration in the District Court. The Subject Judge denied reconsideration and the Court of Appeals affirmed that decision as well.

The "cornerstone" of this complaint of judicial misconduct is Complainants' allegation that the Subject Judge has "disquieting links and [a] direct conflict of interest with . . . the Standing Chapter 13 Trustee, formerly assigned to our bankruptcy case." Complainants contend that, prior to ascending to the bench, the Subject Judge worked as an "immediate law partner" with the Standing Chapter 13 Trustee who initially participated in Complainants' case. Specifically, Complainants allege that, in a single state court case that concluded more than a decade ago, the Subject Judge's law firm (but not the Subject Judge himself) represented the Standing Chapter 13 Trustee a civil malpractice action.² Complainants further allege that the failure to disclose this putative

¹ Complainants previously filed a complaint of judicial misconduct against the Bankruptcy Judge. See J.C. No. 03-13-90073. The complaint was dismissed in March 2014 pursuant to 28 U.S.C. §§ 352(b)(1)(A)(i), (ii), and (iii). The Judicial Council denied Complainants' petition for review.

² Complainants' evidence is a printout from a 2001 state court opinion, in which the Chapter 13 Trustee (or another individual with the same name) was the defendant.

relationship amounts to “perjury” and “fraud” and is indicative of a “a malicious, personal, hidden agenda in covering up his relationship with [the Standing Chapter 13 Trustee].” According to Complainants, based upon the alleged relationship and nothing more, “[a]ll our valid Appeals were denied by [the Subject Judge]” because “he was prejudiced against us from the start.”

Even if it were assumed that the Subject Judge encountered the Chapter 13 Trustee in 2001 when the Chapter 13 Trustee (apparently) hired other attorneys from the Subject Judge’s firm, that alone does not reasonably establish a conflict of interest. The Subject Judge left private practice in 2006 when he joined the federal bench, and Complainants have not provided anything in recent history that could remotely establish the existence of a “disquieting link[]” between the Subject Judge and the Standing Chapter 13 Trustee. Moreover, the Standing Chapter 13 Trustee stopped participating in Complainants’ bankruptcy case in July 2011, when Complainants began filing their District Court appeals. Thus, while the appeals were before the Subject Judge, the Chapter 13 Trustee was not participating in the case; indeed, the Chapter 13 Trustee never entered an appearance in any of those matters.

Thus, the “cornerstone” of this complaint of judicial misconduct is extremely weak evidence that, at best, may establish that the Subject Judge years ago met an individual who had a role in Complainants’ bankruptcy proceeding before the Subject Judge did. Complainants’ conclusory statements notwithstanding, such allegations are far too tenuous to give rise to a reasonable “appearance of suspicious intimacy” or “suspicion of

impropriety.” Indeed, Complainants’ allegations are subject to dismissal because, even if true, the relationship alleged simply does not rise the level of conduct prejudicial to the effective expeditious administration of the business of the courts. 28 U.S.C.

§ 352(b)(1)(A)(iii); Rule 11(c)(1)(A), Rules for Judicial-Conduct and Judicial-Disability Proceedings.

Much of the remainder of the complaint is concerned with Complainants’ obvious disagreement with the Subject Judge’s decision to “routinely den[y]” Complainants’ allegedly “valid and meritorious Appeals.” Complainants state that the Subject Judge’s decision “was riddled with inaccuracies and disingenuous statements,” and they contend they “have numerous and meritorious grounds and material facts that clearly, strongly, and unambiguously refute the Judicial ‘Opinion’ authored by [the Subject Judge].”

These allegations are merits-related. “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 as judicial misconduct. Indeed, Complainants already had the opportunity to challenge the merits of the Subject Judge’s decision in the Court of Appeals. This administrative proceeding does not permit them a second bite at the same apple. 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-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.

Finally, Complainants allege that the Subject Judge's decision denying their appeals was "consistently slanted, biased, and intellectually dishonest, but contained fulminations that were so full of factual errors, that unfairly attacked and assailed us with undisguised vitriol." They further allege that the language of his decision "pontificated with a hollow word play in a way that was pompous and dogmatic."

Upon review, the language in the Subject Judge's opinions and orders in Complainants' case does not support these allegations. The Subject Judge's tone is appropriate and respectful. Accordingly, Complainant's allegations are 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)(D), Rules for Judicial-Conduct and Judicial-Disability Proceedings.

For the foregoing reasons, this 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: August 7, 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 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.

s/ Theodore A. McKee

Chief Judge

Dated: August 7, 2014