

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. Nos. 03-14-90081, 03-14-90082, 03-14-90083

IN RE: COMPLAINT OF JUDICIAL MISCONDUCT
OR DISABILITY

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

MEMORANDUM OPINION

Filed: March 24, 2015

PRESENT: McKEE, Chief Judge.

These are three complaints filed under the Judicial Conduct and Disability Act, 28 U.S.C. §§ 351-64, against three United States District Judges (hereinafter “Subject Judge I,” “Subject Judge II,” and “Subject Judge III”). 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). 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).

As a preliminary matter, Complainant makes allegations concerning individuals and entities who are not subject to the Judicial Conduct and Disability Act; e.g., attorneys, District Court Clerk's Office staff, and a court reporter. See 28 U.S.C. §§ 351, 352(b)(1)(A)(i); Rule 4, Rules for Judicial-Conduct and Judicial-Disability Proceedings. Accordingly, these allegations will not be addressed in this opinion.

Complainant's primary contention is that the Subject Judges should have recused themselves and have "tainted the Court" because they have shares in mutual funds and those mutual funds have holdings in companies which are parties in her civil litigation. Complainant contends that this failure to recuse constitutes "constructive fraud," "collusion," and "malicious judicial misconduct." In support of these allegations, Complainant has attached over one hundred pages of attachments, including tables of the Subject Judges' alleged financial holdings, copies of pleadings filed in District Court raising many of the same issues, and a transcript of a hearing regarding her former attorney's motion to withdraw, among other things. Allegations seeking to challenge a Subject Judge's failure to recuse are plainly merits-related and are not 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 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).¹

Even assuming *arguendo* that Complainant’s allegations are cognizable, all of Complainant’s exhibits have been reviewed and there is no evidence to support Complainant’s allegations of misconduct. The tables of investments attached to the complaint appear to contain descriptions of the Subject Judges’ participation in mutual funds or common investment funds and provide no evidence of the Subject Judges’ participation in the management of any of the funds. The judicial recusal statute specifically carves out mutual or common investment funds from the definition of a “financial interest”: “Ownership in a mutual or common investment fund that holds securities is not a ‘financial interest’ in such securities unless the judge participates in the management of the fund.” 28 U.S.C. § 455(d)(4)(i); see also Central Telephone Co. of Virginia v. Sprint Communications Co. of Virginia, Inc., 715 F.3d 501, 515-516 (4th Cir. 2013). Congress created this exception to “enable judges to hold securities without

¹ Complainant filed motions to recuse in her District Court proceedings, but Subject Judge II issued an order denying these motions without prejudice to renew pending a decision by the United States Court of Appeals for the Federal Circuit. I express no opinion as to the merits of these recusal motions.

risking recusal across a broad range of cases.” Id. (citing and quoting New York City Dev. Corp. v. Hart, 796 F.2d 976, 980 (7th Cir. 1986) (“When Congress amended § 455 in 1974, it designed § 455(d)(4)(i) as a safe harbor, a way for judges to hold securities without needing to make fine calculations of the effect of a given suit on their wealth.”)).² See also Committee on Codes of Conduct, Advisory Opinion No. 106 (“Consistent with the ‘safe harbor’ concept, the Committee has advised that investment in a mutual fund does not convey an ownership interest in the companies whose stock the fund holds. We also have advised that a judge who invests in a mutual fund has no duty to affirmatively monitor the underlying investments of the fund for recusal purposes.”). Complainant’s allegations are, therefore, also subject to dismissal as 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)(D), Rules for Judicial-Conduct and Judicial-Disability Proceedings.

In addition, Complainant complains that a case was transferred from Subject Judge III to Subject Judge II less than a week before a hearing with Subject Judge I’s “blessing.” Complainant alleges that additional briefings and argument should have been ordered to familiarize Subject Judge II with the case. This argument is directly-related to the merits of an administrative decision to transfer a case. As discussed extensively above, merits-related allegations are not cognizable in these proceedings. Commentary on Rule 3, “Any allegation that calls into question the correctness of an official action of a judge – without

² Complainant has also sought my disqualification from consideration of these misconduct complaints on similar putative financial grounds. I decline to disqualify myself for the reasons stated above.

more – is merits-related.” In any event, the transfer of the case is not evidence of judicial misconduct under the circumstances presented here and this allegation is dismissed 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.

Complainant further complains that there has been “collusion” among the judges and court personnel and that Subject Judge III advised “Court Personnel, [and the] Clerk of the Court” not to accept filings in the Court from Complainant “under the guise of procedure.” Complainant also alleges that Subject Judge III allowed the docketing of a motion, but subsequently ordered the motion stricken. Complainant’s allegations relate to the order issued by Subject Judge III which provides that the plaintiff in the pending case is a:

corporation that does not have counsel. [Complainant], an individual, has filed a motion to be substituted in for the Plaintiff, but briefing on that motion is pending. Unless and until briefing is completed and the motion is resolved in [Complainant’s] favor, Complainant cannot file documents as the Plaintiff . . . Until further notice, the Clerk’s Office is DIRECTED to file no further documents received from [Corporation] pro se or [Complainant] unless they are connected with the pending substitution motion.

This order is self-explanatory and does not provide evidence of judicial misconduct of any kind. Complainant also appears to believe that “collusion” is responsible for the difficulty she allegedly had in obtaining a transcript. Complainant provides no evidence for her claims of “collusion” beyond speculation. These allegations are dismissed 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. To the extent that Complainant is seeking to collaterally attack Subject Judge III's order described above, her allegations are also subject to dismissal as 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.

Complainant further alleges that Subject Judge II has engaged in judicial misconduct because her financial disclosure forms "appear incomplete" due to a failure to list extended family holdings or any "assets at all, which cannot be." Complainant again offers no evidence for this allegation apart from speculation and a citation to a "Judicial Watch" website, which provides access to a putative copy of Subject Judge II's financial disclosure form. The allegation is dismissed. 28 U.S.C. § 352(b)(1)(A)(iii); Rule 11(c)(1)(C), (D), Rules for Judicial-Conduct and Judicial-Disability Proceedings.

Finally, in the course of these proceedings, Complainant filed an unsworn supplement concerning Subject Judge III. This unsworn supplement alleges that Subject Judge III practiced law more than thirty years ago at a law firm that currently represents certain defendants. Complainant also asserts in an attached pleading that the civil proceedings should be nullified because Subject Judge III has holdings in certain mutual funds. I have considered these unsworn allegations concerning Subject Judge III under Rule 5, Rules for Judicial-Conduct and Judicial-Disability Proceedings. I conclude that the allegations do not provide "reasonable grounds for inquiry" into the existence of misconduct and I therefore decline to identify any complaints based upon them. See Rule

5, Rules for Judicial-Conduct and Judicial-Disability Proceedings. See also 28 U.S.C. § 352(b)(1)(A)(ii); 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”); Rule 11(c)(1)(B), 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)(i), (ii), and (iii).

s/ Theodore A. McKee
Chief Judge

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IN RE: COMPLAINT OF JUDICIAL MISCONDUCT
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ORDER

Filed: March 24, 2015

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)(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 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: March 24, 2015