

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

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J.C. No. 03-15-90102

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IN RE: COMPLAINT OF JUDICIAL MISCONDUCT  
OR DISABILITY

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

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MEMORANDUM OPINION

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(Filed: May 11, 2016)

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 Court of Appeals Judge (hereinafter “Subject Judge”). For the reasons discussed below, the complaint will be dismissed.<sup>1</sup>

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

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<sup>1</sup> Complainants previously filed two complaints of judicial misconduct which were dismissed as frivolous and merits-related. J.C. Nos. 03-13-90073 and 03-14-90036.

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).

By way of background, Complainants, a married couple, filed a voluntary petition for bankruptcy under Chapter 13. An automatic stay was entered. The matter was later converted to a Chapter 7 proceeding. A creditor purchased a tax lien on Complainants' property and sought relief from the automatic stay. The Bankruptcy Court granted the creditor's motion and the District Court affirmed. Complainants appealed two orders that arose from subsequent related District Court proceedings. In the course of Complainants' appeal to the Third Circuit, the Subject Judge ruled on an emergency stay motion. After the Subject Judge ruled on the stay motion, Complainants filed a motion to recuse the Subject Judge and the present misconduct complaint requesting impeachment.

Complainants contend in their submissions that the Subject Judge has a "family relationship" with an attorney who represented one of their adversaries, and that, as a result, he should be recused and his previous order denying the stay motion should be vacated. In support of these allegations, they rely on an excerpt from an obituary for a relative of the attorney. Complainants further allege that the Subject Judge had "impermissible, disqualifying conflicts of interest" with the attorney discussed above, as

well as another attorney. They further allege that the Subject Judge has “close financial and intimate and family ties with our adversaries and the adversaries’ representative legal counsel . . . .”

In view of the overlap between the allegations made in the appellate and misconduct proceedings, action on Complainants’ complaint of judicial misconduct was deferred until the conclusion of Complainants’ appeal. Commentary on Rule 3 (“there may be occasions when appellate and misconduct proceedings overlap, and consideration and disposition of a complaint under these Rules may be properly deferred by the chief judge until the appellate proceedings are concluded in order to avoid, *inter alia*, inconsistent decisions”). Complainants’ appeal was dismissed and a panel of judges denied the recusal motion without prejudice to reassert the motion if Complainants’ filed a petition for hearing en banc.<sup>2</sup> After moving for an extension of time to file a petition for rehearing en banc, Complainants did not file a petition and the appeal is now closed.

Complainants’ allegations about the Subject Judge’s family relationship with an attorney and their request for the Subject Judge’s recusal and impeachment are subject to dismissal. Allegations seeking to question a failure to recuse are merits-related and 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

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<sup>2</sup> The Subject Judge did not sit on this panel.

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).

In any event, I conducted a limited inquiry with respect to the Subject Judge’s putative family relationship with the attorney referenced in the obituary relied on by Complainants. The obituary does not provide any evidence of judicial misconduct. The attorney referenced in the obituary is the brother in-law of the Subject Judge’s brother.<sup>3</sup> Even assuming *arguendo* that an in-law once removed is properly described as a “relative” of the Subject Judge, it is clear that this is an attenuated relationship and that the attorney is not “within the third degree of relationship” with the Subject Judge such that recusal would be required. 28 U.S.C. § 455(b)(5).<sup>4</sup> Indeed, the attorney in question did not enter an appearance in either the appeal or the underlying District Court and Bankruptcy proceedings that were the subject of the appeal. Moreover, a Third Circuit panel – which did not include the Subject Judge – denied Complainants’ recusal motion raising the same allegations of misconduct as those asserted in the present administrative

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<sup>3</sup> Although an individual with the same first name as the Subject Judge is listed in the obituary, the individual named is not the Subject Judge.

<sup>4</sup> Third-degree familial relationships includes that of “parent, child, grandchild, great grandparent, great grandchild, sister, brother, aunt, uncle, niece, and nephew” either of the judge or the judge’s spouse. Oriental Fin. Group, Inc. v. Fed. Ins. Co., 467 F. Supp. 2d 176, 179 (D.P.R. 2006) (citing the Checklists for Financial and Other Conflicts of Interest, appendix to the Code of Conduct for United States Judges).

proceedings. The panel also dismissed Complainants' appeal as moot and summarily affirmed the District Court's order affirming the Bankruptcy Court's order re-imposing in part the automatic stay. Complainant's allegations lack any factual foundation and are dismissed. 28 U.S.C. § 352(b)(1)(B).

In addition, the record and Complainant's many exhibits have been reviewed and there is no evidence of improper financial ties, bias, or judicial misconduct of any kind. Accordingly, there is no evidence to support any of Complainant's allegations of misconduct. Complainant's allegations are also 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.

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

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(Filed: May 11, 2016)

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 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](http://www.ca3.uscourts.gov).

s/ Theodore A. McKee  
Chief Judge

Dated: May 11, 2016