

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

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J.C. No. 03-16-90020

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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 20, 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 District 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> Complainant filed another complaint against the same Subject Judge that was dismissed as frivolous and merits-related. J.C. No. 03-13-90049.

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, Complainant was the plaintiff in a lawsuit seeking reinstatement to a medical school. The Subject Judge granted defendants' motion for summary judgment. Complainant filed a direct appeal and a panel of this Court affirmed the District Court's judgment.

Based on his internet research, Complainant contends that the Subject Judge has been hostile against him because of an alleged economic interest in the outcome of the lawsuit "through his spouse." Complainant alleges that the Subject Judge should have recused himself from an underlying civil suit because his wife, a clinical social worker, has "practiced medicine" on hospital property belonging to an academic entity named as a defendant in Complainant's civil suit. In addition, Complainant disputes a ruling by a panel of this Court on direct appeal that Complainant's motion to recuse the Subject Judge was moot. An allegation which seeks to collaterally attack a failure to recuse, however, is merits-related and not cognizable under the Judicial Conduct and Disability Act. 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”). See also 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 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, Complainant’s allegations regarding the Subject Judge’s putative bias in favor of the defendant academic entity are based on nothing more than speculation and innuendo. Complainant’s internet research has been reviewed and does not provide any evidence of judicial misconduct or bias. The Subject Judge’s spouse does not have a “financial interest” in the lawsuit. Indeed, the Subject Judge’s wife was not a party to the civil suit or associated with the litigation in any way. Complainant’s allegations of judicial misconduct 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.

Complainant further alleges that the Subject Judge has “mistreated” him and issued a prejudicial order granting summary judgment for defendants due to his bias against Complainant. These allegations are likewise meritless. As discussed in J.C. No. 03-13-90049, Complainant filed an unsuccessful mandamus petition seeking the Subject Judge’s

recusal that was denied by a merits panel of this Court.<sup>2</sup> In rejecting Complainant's argument that the Subject Judge's disqualification was required, the Third Circuit panel further observed that:

None of [Complainant's] arguments has merit. [Complainant] argues that the District Judge has exhibited hostility toward him in his written opinions, but our review of those opinions reveals no such hostility. [Complainant] argues that the District Judge treated him and the defendants inconsistently . . . There is no inconsistency in those rulings given the difference between the two types of motions.

Another more recent mandamus petition again sought the Subject Judge's recusal and was denied. The panel's opinion cautioned Complainant against continuing to abuse the Court's process and, while expressing no view as to the merits of the Subject Judge's rulings, the panel concluded that the rulings "come nowhere close to suggesting the kind of bias or hostility that [Complainant] alleges." Furthermore, as noted above, a panel of this Court affirmed the District Court's judgment on direct appeal. The panel commended the Subject Judge "for his patience and diligence in guiding this case to resolution." There is no evidence to support Complainant's allegations of misconduct and they 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.

Given the frivolous and merits-related nature of Complainant's current and prior allegations, his attention is directed to Rule 10(a), Rules for Judicial-Conduct and Judicial-

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<sup>2</sup> Complainant has filed multiple unsuccessful mandamus petitions regarding the same litigation.

Disability Proceedings.<sup>3</sup> Future abuse of the misconduct procedures could result in the imposition of sanctions under that rule.

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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<sup>3</sup> Rule 10(a), Rules for Judicial-Conduct and Judicial-Disability Proceedings, states:

(a) Abusive Complaints. A complainant who has filed repetitive, harassing, or frivolous complaints, or has otherwise abused the complaint procedure, may be restricted from filing further complaints. After giving the complainant an opportunity to show cause in writing why his or her right to file further complaints should not be limited, the judicial council may prohibit, restrict, or impose conditions on the complainant's use of the complaint procedure. Upon written request of the complainant, the judicial council may revise or withdraw any prohibition, restriction, or condition previously imposed.

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ORDER

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(Filed: May 20, 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 20, 2016