

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. No. 03-19-90075

IN RE: COMPLAINT OF JUDICIAL MISCONDUCT
OR DISABILITY

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

MEMORANDUM OPINION

(Filed: May 19, 2020)

PRESENT: SMITH, *Chief Judge*.

This complaint is filed by a law firm under the Judicial Conduct and Disability Act, 28 U.S.C. §§ 351-64, against a United States District Judge (the “Subject Judge”).¹ 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).

¹ The complaint form lists a law firm as the complainant and is signed by an individual attorney from the law firm. In the present opinion, the term “Complainant” will refer to the law firm.

Complainant alleges that the Subject Judge engaged in judicial misconduct when he critiqued an attorney from the law firm in the course of a civil suit and made a false statement in a written opinion regarding the attorney. Complainant further alleges that the Subject Judge treated the law firm in a “demonstrably egregious and hostile manner,” made “unnecessary and inappropriate attacks upon counsel,” and engaged in “palpable bias and partiality.”

Although Complainant states that the complaint of judicial misconduct does not derive from the jury verdict or rulings made by the Subject Judge, the Subject Judge’s rulings are a focus of the complaint. For example, Complainant criticizes the Subject Judge’s statements in an opinion denying post-trial motions, asserts that the Subject Judge “misrepresented” deposition testimony, questions why the Subject Judge raised issues *sua sponte*, and states that the Subject Judge “did not address” arguments and made false attacks in the course of denying the law firm’s recusal motion. To the extent Complainant’s allegations contest the Subject Judge’s judicial rulings, such as his refusal to recuse himself and other decisions made in the course of the underlying civil action, Complainant’s allegations do not constitute cognizable misconduct under the Judicial Conduct and Disability Act. Rule 4(b)(1), *Rules for Judicial-Conduct and Judicial-Disability Proceedings* (“Cognizable misconduct does not include an allegation that calls into question the correctness of a judge’s ruling, including a failure to recuse.”). Accordingly, Complainant’s merits-related allegations will be dismissed. *See* 28 U.S.C. § 352(b)(1)(A)(ii); Rules 4(b)(1), 11(c)(1)(B), *Rules for Judicial-Conduct and Judicial-*

Disability Proceedings. Notably, Complainant appealed the Subject Judge’s decisions, including his denial of the recusal motion, to the Court of Appeals. A panel of Third Circuit judges affirmed the Subject Judge’s decisions.²

I now turn to a discussion of Complainant’s remaining allegations. Per our practice when a misconduct complaint is filed by an attorney, I requested the Subject Judge to submit a response to the complaint and he did so. In addition, the transcript from a portion of the jury trial and the other documentation that Complainant attached to the complaint have been reviewed. There is no evidence suggesting conduct that would rise to the level of judicial misconduct. Furthermore, it is significant that, as discussed above, Complainant raised many of the same allegations about the Subject Judge’s putative actions in the recusal motion and subsequent unsuccessful direct appeal. The reviewing panel of this Court did not even hint in their opinion that the Subject Judge had acted improperly in the underlying matter and affirmed the District Court’s orders denying post-trial relief. Specifically, the panel ruled as follows regarding the recusal motion:

The District Court believed that [counsel] made an inappropriate argument during her closing argument. At a sidebar discussion when the jury was absent, the District Court expressed dissatisfaction with [counsel]. And later, in a memorandum opinion denying [Complainant’s client’s] post-trial motions, the District Court said that [counsel] “crossed the line

² A decision in the present matter was held in abeyance pending the conclusion of Complainant’s direct appeal as many of the same allegations were raised in both the appeal and the complaint of judicial misconduct. *See* Commentary on Rule 4, *Rules for Judicial-Conduct and Judicial-Disability Proceedings* (“[T]here 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 to avoid inconsistent decisions.”).

separating zealous advocacy from improper argument” because the argument lacked a “basis in the evidence at trial” and “counsel knew from the underlying discovery [that it was] false.” [citation omitted]

These statements by the District Court do not warrant recusal. The District Court’s “expressions of impatience, dissatisfaction, annoyance, [or] even anger ... are within the bounds of what imperfect men and women, even after having been confirmed as federal judges, sometimes display.”³

Accordingly, Complainant’s allegations are dismissed as frivolous and unsupported by evidence that would raise an inference that misconduct has occurred or that a disability exists. 28 U.S.C. § 352(b)(1)(A)(iii); Rule 11(c)(1)(C), (D), *Rules for Judicial-Conduct and Judicial-Disability Proceedings*.

Based on the foregoing, this complaint will be dismissed pursuant to 28 U.S.C. § 352(b)(1)(A)(ii) and (iii).

s/ D. Brooks Smith
Chief Judge

³ The panel opinion thereafter cited *Liteky v. United States*, 510 U.S. 540, 555-56 (1994).

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. No. 03-19-90075

IN RE: COMPLAINT OF JUDICIAL MISCONDUCT
OR DISABILITY

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

ORDER

(Filed: May 19, 2020)

PRESENT: SMITH, *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.

s/ D. Brooks Smith
Chief Judge

Dated: May 19, 2020