

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. No. 03-17-90005

IN RE: COMPLAINT OF JUDICIAL MISCONDUCT
OR DISABILITY

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

MEMORANDUM OPINION

(Filed: July 11, 2017)

PRESENT: SMITH, *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.

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).

Complainants were plaintiffs in a civil action assigned to the Subject Judge. Although the underlying civil action settled approximately nine months before Complainants filed the present complaint of judicial misconduct, Complainants now allege that the "newly appointed" Subject Judge's "ability to adjudicate this case of ours caused us considerable concern." According to Complainants, the Subject Judge "developed the reputation of dispatching his case loads as quickly as possible, again causing concern about his due diligence, effort and time spent in evaluating and researching the cases set before him" Complainants provide no support for their allegations and provide no evidence of any judicial misconduct. Complainants' allegations therefore 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*.

In addition, Complainants request an investigation into alleged communications between the Subject Judge and a judge whom they contend is the sister of one of the defendants in the civil litigation. Complainants suggest that there may have been "monetary or other considerations" and the judge "must have" contacted the Subject Judge "to side with the defense entirely." Again, Complainants provide absolutely no evidence for their serious allegations. Rather, Complainants' unsupported allegations are based on

nothing more than sheer speculation and conjecture. Indeed, the docket does not reflect that a judge with the name provided by Complainants had any involvement whatsoever with the underlying federal litigation. Nor is there any judge on the federal bench with the name provided by Complainants.¹ Accordingly, Complainants' allegations are again dismissed as frivolous and unsupported by any evidence that would raise an inference that misconduct has occurred. *Id.*

Complainants further question why the Subject Judge failed to recuse himself and state that they were entitled to have their case heard by a jury of their peers. Complainants plainly seek to collaterally attack the Subject Judge's rulings in the underlying civil matter and thus their allegations are dismissed as merits-related. 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). In any event, a recusal motion was never filed in the underlying civil

¹ A Westlaw search found no record of any judge, state or federal, in the Third Circuit with the name provided by Complainants. To the extent Complainants seek to complain about the actions of individuals who are not subject to the Judicial Conduct and Disability Act, such as attorneys, defendants, or state or municipal court judges, their allegations will not be addressed in this opinion. *See* 28 U.S.C. §§ 351, 352(b)(1)(A)(i); Rule 4, *Rules for Judicial-Conduct and Judicial-Disability Proceedings*.

matter. Moreover, Complainants' case was resolved when plaintiffs and defendants submitted a joint stipulation and order of dismissal after the parties reached a settlement agreement. Thus, Complainants' 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*.

Finally, Complainants allege that the Subject Judge's demeanor was hostile and biased against them. They claim that they witnessed this "first hand during our trial hearing in [the] later part of 2015."² Complainants, however, do not reference any specific comments or actions in support of their allegations of hostility and bias. Furthermore, the available record has been reviewed and there is no evidence of any judicial misconduct. Complainants' allegations are dismissed 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*.

For the foregoing reasons, the complaint is dismissed pursuant to 28 U.S.C. § 352(b)(1)(A)(i), (ii), and (iii).

s/ D. Brooks Smith
Chief Judge

² Complainants appear to be referring to a Daubert hearing that occurred in 2015.

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ORDER

(Filed: July 11, 2017)

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)(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 within **42 days** after the date of the chief judge's order.

Rule 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: July 11, 2017