

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. No. 03-18-90211

IN RE: COMPLAINT OF JUDICIAL MISCONDUCT
OR DISABILITY

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

MEMORANDUM OPINION

(Filed: November 28, 2018)

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 (the “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).

Complainant was a defendant in a criminal proceeding before the Subject Judge in which he was accused of taking hostages and attempting to extort millions of dollars from

a casino. He pleaded guilty and, in 2010, the Subject Judge sentenced him to a lengthy term of imprisonment. On appeal, the Court of Appeals affirmed the sentence.

In 2012, Complainant filed a motion to vacate, set aside, or correct the sentence pursuant to 28 U.S.C. § 2255. He argued, among other things, that the Subject Judge denied him due process by declining to recuse himself based on his past legal career, in which he represented casinos and a casino association. The Subject Judge denied the § 2255 motion, acknowledging the prior representation but stating that the professional relationship “had long since terminated” and observing that no casinos were party to the criminal proceeding in any event. Complainant appealed. The Court of Appeals affirmed, concluding that the Subject Judge did not commit plain error by declining to recuse. It observed that the Subject Judge’s past representation of casinos and a casino association “does not imply that the District Judge was impartial or biased.”¹

In the current complaint of judicial misconduct, Complainant accuses the Subject Judge of making “patently untrue” statements in the order denying his § 2255 motion. Complainant takes issue with the following statement by the Subject Judge: “[a]ny relationship the Court had with the casino industry had long since terminated by the time the Court presided over Petitioner’s case, as had the Court’s partnership with the law firm.” Complainant contends that the Subject Judge actually was still a partner in the law

¹ In July 2015, Complainant filed a complaint of judicial misconduct against the Subject Judge, arguing that the failure to recuse based on the prior representation of casinos and a casino association constituted judicial misconduct. *See* J.C. No. 03-15-90081. The prior Chief Circuit Judge dismissed the complaint as merits-related, unsupported, and frivolous pursuant to 28 U.S.C. § 352(b)(1)(A)(ii) and (iii). Complainant petitioned for review, and the Judicial Council denied the petition on February 3, 2016.

firm that represented casinos “as late as 2014, and continued throughout Complainant’s sentencing and appellate process.” In addition, Complainant alleges that the Subject Judge’s financial disclosures show that he received a substantial annual income from the law firm from 2007 through 2011. Finally, Complainant alleges that the Subject Judge recused himself from several other, unrelated cases “due to a conflict of interest.”

The majority of Complainant’s allegations are simply incorrect. Public records reveal that the Subject Judge separated from his prior law firm when he took the bench in June 2006, and the law firm removed the Subject Judge’s name from its banner by 2007.² Moreover, upon review of publicly available financial disclosure forms for fiscal years 2006 through 2011, it is apparent that the Subject Judge was employed by the law firm only for a portion of the year that he became a judge. After 2006, the Subject Judge’s financial disclosures reflect that he was not employed by, and did not receive non-investment income from, his former law firm.³ Thus, in contrast to the allegations of the complaint, the Subject Judge was not associated with his prior law firm during the pendency of Complainant’s criminal proceeding.

In sum, there is no evidence to support Complainant’s claims of bias and dishonesty based upon an ongoing professional affiliation with the Subject Judge’s former law firm. Because Complainant’s allegations are frivolous and unsupported by evidence

² The firm disbanded entirely in 2018 when its partners merged with a larger firm.

³ In fiscal years 2006 and 2007, the Subject Judge reported a small amount of investment income from a law firm 401(k). After 2007, the Subject Judge appears to have received no income from his former law firm.

that would raise an inference that misconduct has occurred, they are subject to dismissal.⁴ 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, to the extent this complaint is intended to challenge the Subject Judge's disposition of Complainant's § 2255 motion, this is a merits-related dispute. "An allegation that calls into question the correctness of a judge's ruling . . . without more, is merits-related." Rule 3(h)(3)(A), *Rules for Judicial-Conduct and Judicial-Disability Proceedings*). Merits-related allegations do not constitute cognizable misconduct under the Judicial Conduct and Disability Act. 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*. Accordingly, all merits-related allegations will be dismissed.

Notably, Complainant recently filed a motion to reopen his § 2255 proceeding pursuant to Rule 60(b) of the Federal Rules of Civil Procedure, in which he presented the same claims that appear in this complaint of judicial misconduct. Complainant also renewed his recusal motion. The Subject Judge denied both motions. This proceeding does not permit Complainant an opportunity to collaterally challenge those rulings. 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

⁴ Complainant's reference to a small number of unrelated proceedings over the course of several years in which the Subject Judge may have recused himself does not, as a factual matter, lend support to Complainant's allegations of judicial misconduct. Indeed, a decision to recuse, without more, is a merits-related matter and does not constitute cognizable misconduct. 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*.

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).

Based on the foregoing, this complaint will be dismissed pursuant to 28 U.S.C. § 352(b)(1)(A)(ii) and (iii). As this is Complainant's second complaint of judicial misconduct naming the same Subject Judge to be dismissed on these grounds, Complainant's attention is directed to Rule 10(a), *Rules for Judicial-Conduct and Judicial-Disability Proceedings*.⁵ Future abuse of the judicial misconduct complaint procedure may result in the imposition of restrictions under this provision.

s/ D. Brooks Smith
Chief Judge

⁵ Rule 10(a) of the *Rules of Judicial-Conduct and Judicial-Disability Proceedings* provides:

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

(Filed: November 28, 2018)

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: November 28, 2018