

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. No. 03-13-90079

IN RE: COMPLAINT OF JUDICIAL MISCONDUCT
OR DISABILITY

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

MEMORANDUM OPINION

Filed: December 12, 2013

PRESENT: McKEE, Chief Judge.

This complaint is 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, on behalf of herself and as “power of attorney” for her parents, filed a pro se complainant in state court, asserting claims of discrimination and statutory

violations relating to the defendants' efforts to foreclose on the parents' home. The defendants removed the matter to District Court and the matter was assigned to the Subject Judge.

Noting that this was the plaintiffs' third attempt to pursue essentially the same complaint, the Subject Judge dismissed the complaint with prejudice for failure to state a claim upon which relief can be granted and also as barred by *res judicata*. Among other things, the Subject Judge observed that the plaintiffs "have established a pattern of filing frivolous complaints, ignoring the rules of procedure and disrespecting the orders of this court." The Subject Judge also observed that Complainant was improperly attempting to engage in the unauthorized practice of law by attempting to represent her parents. Complainant filed an appeal from the Subject Judge's decision, which is currently pending.

The instant judicial misconduct complaint is Complainant's second against the Subject Judge. See J.C. No. 03-13-90007. Complainant expressly filed the current misconduct complaint "in response to ruling Order [dismissing her complaint]." In it, she explains in detail all the reasons why, in her view, the Subject Judge's order is legally and factually incorrect. Complainant enumerates alleged "Errors and Omissions by [the Subject Judge] referencing his ruling Order [dismissing the complaint]," including, among others, that Complainant had a financial power of attorney to act on behalf of her parents and that "P.O.A. was [wrongfully] excluded," and also that the defendants "are admitting constitutional violations" in their notice of removal. Complainant then proceeds to

respond to the Subject Judge's order, paragraph by paragraph, setting forth in minute detail whether she admits or denies each of the Subject Judge's findings and conclusions.

It is apparent that Complainant vigorously disagrees with the Subject Judge's order dismissing her complaint. "An allegation that calls into question the correctness of a judge's ruling, including a failure to recuse, without more, is merits-related." Rule 3(h)(3)(A), Rules for Judicial-Conduct and Judicial-Disability Proceedings. As Complainant has previously been informed, merits-related disputes do not constitute cognizable judicial 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.

Moreover, 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). Complainant's detailed arguments about the legal merit of the Subject Judge's order should be raised in her pending appeal from that order, not in this administrative proceeding. Accordingly, Complainant's merits-related allegations are dismissed. 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.

Complainant presents nothing apart from her merits-related allegations to substantiate her vague claims that, by dismissing the complaint, the Subject Judge abused his powers and engaged in "a breach of his oath and ethics." These bald and unfounded

accusations are dismissed as frivolous and unsupported by evidence that would raise an inference that misconduct 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). Because Complainant has filed three misconduct complaints that have been dismissed under these provisions, see J.C. Nos. 03-13-90007, 03-13-90078, 03-13-90079, Complainant's attention is directed to Rule 10(a), Rules for Judicial-Conduct and Judicial-Disability Proceedings.¹ Complainant is cautioned that future abuse of the judicial misconduct complaint procedure may result in the imposition of restrictions under that rule.

/s/ Theodore A. McKee
Chief Judge

¹ Rule 10(a), Rules for Judicial-Conduct and Judicial-Disability Proceedings, states:

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, a 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: December 12, 2013

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 clerk of the court of appeals within **35 days** of the date on the clerk's letter informing the parties of the chief judge's order.

18(b) Form. The petition should be in letter form, addressed to the clerk of the court of appeals, 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 Clerk’s Office of the Court of Appeals for the Third Circuit and on the Court of Appeals’ internet site, www.ca3.uscourts.gov.

/s/ Theodore A. McKee
Chief Judge

Dated: December 12, 2013