

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. No. 03-13-90087

IN RE: COMPLAINT OF JUDICIAL MISCONDUCT
OR DISABILITY

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

MEMORANDUM OPINION

(Filed: February 21, 2014)

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).

In August 2013, Complainant filed a pro se civil complaint against two District Judges and a District Court employee. The matter was assigned to the Subject Judge.

Complainant moved to proceed *in forma pauperis*. In November 2013, the Subject Judge granted the motion and screened the complaint pursuant to 28 U.S.C. §1915. He concluded that the complaint did not comply with the Federal Rules of Civil Procedure and that the claims were barred by judicial immunity. He therefore dismissed the complaint with prejudice. The Subject Judge filed an amended opinion shortly thereafter for the purpose of correcting a minor error. Complainant did not appeal the judgment, although she filed a document in the District Court entitled “Petition for a Writ of Certiorari.”¹ It does not appear that any action has been taken on the document.

This complaint of judicial misconduct is the fourth that Complainant filed in a span of less than five months. In it, she alleges that the Subject Judge “has been corrupt, unethical, and his behavior was criminal, and used misconduct in this matter.” Specifically, she alleges that the Subject Judge’s decision to dismiss her complaint was contrary to “rules and civil procedures” as well as the “concret[e] evidence” that Complainant presented. She contends that the judgment was motivated by the desire “to protect the defendants” and therefore reflects the Subject Judge’s alleged bias in the defendants’ favor. Based upon these allegations, Complainant argues that the dismissal order “should be void” and concludes that the Subject Judge “used his authority power to obstruct justice, and engaged in the act of treason.”

It is readily apparent that the Complainant’s allegations are intended as a collateral attack on the merits of the judgment in her civil case. The “misconduct procedure [under

¹ A petition for a writ of certiorari must be filed in the United States Supreme Court, pursuant to the Supreme Court’s rules and procedures.

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 allegations are merits-related. Rule 3(h)(3)(A), Rules for Judicial-Conduct and Judicial-Disability Proceedings ("An allegation that calls into question the correctness of a judge's ruling, including a failure to recuse, without more, is merits-related."). Such claims are not appropriately raised in a judicial misconduct proceeding. Because Complainant's allegations are not cognizable as judicial misconduct, they 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's claims that the Subject Judge's decision was motivated by bias and a desire to protect the defendants is based entirely upon her disagreement with the merits of that decision. She provides nothing to substantiate her allegations of obstruction of justice and treason. The record reflects no impropriety whatsoever. Accordingly, any remaining allegations are therefore 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.

For the foregoing reasons, the complaint is dismissed pursuant to 28 U.S.C. §§ 352(b)(1)(A)(ii) and (iii). As previously noted, Complainant filed three prior

complaints under the Judicial Conduct and Disability Act, which also were dismissed as merits-related, frivolous, and unsupported by evidence that would raise an inference that misconduct occurred. See J.C. Nos. 03-13-90047; 03-13-90054; 03-13-90064.

Complainant expressly was cautioned that filing additional improper complaints could result in the imposition of restrictions on her ability to file new complaints. See J.C. No. 03-13-09964. Complainant nonetheless filed this complaint. It is once again merits-related, frivolous, and unsupported by sufficient evidence.

Accordingly, a copy of this Memorandum Opinion and Order will be transmitted to the Judicial Council for consideration of whether to issue an order to show cause why Complainant should not be enjoined from filing further complaints under the Judicial Conduct and Disability Act. See Rule 10(a), Rules for Judicial-Conduct and Judicial-Disability Proceedings.

s/ Theodore A. McKee
Chief Judge

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. No. 03-13-90087

IN RE: COMPLAINT OF JUDICIAL MISCONDUCT
OR DISABILITY

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

ORDER

(Filed: February 21, 2014)

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: February 21, 2014