

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. Nos. 03-14-90008, 03-14-90009

IN RE: COMPLAINTS OF JUDICIAL MISCONDUCT
OR DISABILITY

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

MEMORANDUM OPINION

Filed: May 30, 2014

PRESENT: AMBRO, Circuit Judge.¹

These complaints are filed under the Judicial Conduct and Disability Act, 28 U.S.C. §§ 351-64, against two United States Circuit Judges (“Subject Judge I” and “Subject Judge II”). For the reasons discussed below, the complaints 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 Acting pursuant to Rule 25(f), Rules for Judicial-Conduct and Judicial-Disability Proceedings.

Complainant filed a pro se motion in District Court in May 2011. In March 2013, the presiding District Judge denied the motion and closed the case. Complainant did not appeal, but she filed a complaint of judicial misconduct against the presiding District Judge. In September 2013, Subject Judge I dismissed the misconduct complaint pursuant to 28 U.S.C. § 352(b)(1)(A)(ii) and (iii). Complainant filed a petition for review, which the Judicial Council denied in January 2014.

Meanwhile, in October 2013, Complainant filed a second complaint of judicial misconduct, this time against Subject Judge I. Because Subject Judge I was named as the subject judge of the complaint and therefore was disqualified from considering it, Subject Judge II acted pursuant to Rule 25 of the Rules for Judicial-Conduct and Judicial-Disability Proceedings and considered the complaint.² Subject Judge II dismissed the complaint against Subject Judge I pursuant to 28 U.S.C. § 352(b)(1)(A)(ii) and (iii). Complainant filed a petition for review, which the Judicial Council denied in May 2014.

In March 2014, Complainant filed the instant complaints of judicial misconduct (her third and fourth), naming Subject Judge I for the second time, and also naming Subject Judge II. Complainant alleges that Subject Judge I should not have participated in the Judicial Council's disposition of her petition for review of his decision on her first misconduct complaint because she had named him as a Subject Judge in her second, later-

² In relevant part, Rule 25 provides: "If the chief judge is disqualified from participating in consideration of the complaint, the duties and responsibilities of the chief judge under these Rules must be assigned to the most-senior active circuit judge not disqualified." Rule 25(f), Rules for Judicial-Conduct and Judicial-Disability Proceedings. Subject Judge II was the most-senior active circuit judge not disqualified in that proceeding.

filed misconduct complaint. Complainant alleges that “[Subject Judge I] failed to discretionally disqualify himself from the proceedings,” which gives rise to “manifested prejudice and bias” in the judicial council’s disposition of the petition for review.³

Complainant also contends the record “wholly and incontestably confirm[s]” that the petition had merit and that the Judicial Council’s decision to deny it therefore must have been “procured by fraud upon the court, constitute[s] deprivation of my procedural due process right thereby confirming [Subject Judge I’s] willful Judicial Misconduct.”

In the complaint against Subject Judge II, Complainant contends that Subject Judge II lacked authority to dispose of Complainant’s second misconduct complaint, arguing: “[a]s specified in Rule 28 U.S.C. §352, adjudication of a Judicial Misconduct Complaint is the rule of a Chief Judge, not a Circuit Judge. Contrarily, impersonating a Chief Judge and acting without jurisdiction, [Subject Judge II] dismissed my meritorious complaint. . . .” Complainant also re-argues the merits of her second misconduct complaint, contending that Subject Judge II further engaged in misconduct by “willfully [*sic*] enter[ing] an order dismissing my meritorious Judicial Misconduct Complaint.”

Complainant goes on to conclude that “ALL ORDERS” in both of her previous judicial misconduct proceedings “encompass perjury, cover-up, misrepresentation,

³ The Rules for Judicial-Conduct and Judicial-Disability Proceedings do not require a Chief Judge to disqualify himself from considering a petition for review of his own order, nor do they require a Chief Judge to disqualify himself because he has been named as a Subject Judge in a separate proceeding. See Rules 25(a), (b), (c), Rules for Judicial-Conduct and Judicial-Disability Proceedings. The rules do, however, permit any judge from disqualifying himself if, in his discretion, he concludes that the circumstances warrant it. Rule 25(a), Rules for Judicial-Conduct and Judicial-Disability Proceedings.

violation of local rules and statutory laws, and deprivation of my equal protection and due process rights. . . .” In support of her claims, Complainant provides voluminous exhibits comprised primarily of documents from the prior judicial misconduct proceedings and the underlying district court matter.

It is clear that the majority of Complainant’s allegations are merits-related, as Complainant expresses her disagreement with all of the decisions that have been rendered in the course of her judicial misconduct proceedings. “An allegation that calls into question the correctness of a judge’s ruling . . . is merits-related.” Rule 3(h)(3)(A), Rules for Judicial-Conduct and Judicial-Disability Proceedings. Complainant previously has been advised that disagreements with the merits of judicial rulings does not give rise to 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. This rule applies to allegations concerning rulings rendered in the course of a judicial misconduct proceeding. See Commentary to Rule 3, Rules for Judicial-Conduct and Judicial-Disability Proceedings (“[A] complaint challenging the correctness of a chief judge’s determination to dismiss a prior misconduct complaint would be properly dismissed as merits-related . . . even though it does not concern the judge’s rulings in Article III litigation.”). Accordingly, Complainant’s merits-related allegations are dismissed.

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). Moreover, Complainant already has sought review of the decisions in her misconduct proceedings, by filing petitions for review as contemplated by the Rules. See Rule 18, Rules for Judicial-Conduct and Judicial-Disability Proceedings. Complainant is impermissibly attempting to re-argue the allegations of her petitions for review as grounds for new complaints of judicial misconduct. When the Judicial Council issues an order resolving a petition for review, such an order is final, conclusive, and not reviewable on appeal or otherwise. See Rule 19(e), Rules for Judicial-Conduct and Judicial-Disability Proceedings.

Finally, Complainant's claims of "perjury," a "cover-up," "bias," "misrepresentation," and "willfull [*sic*]" misconduct are based upon nothing more than her disagreement with the Subject Judges' decisions and rulings rendered in the course of her prior misconduct proceedings. When these statements are considered apart from the merits-related allegations, it is clear they are entirely unsubstantiated. Accordingly, all of Complainant's remaining allegations 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.

For the foregoing reasons, the complaints are dismissed pursuant to 28 U.S.C. §§ 352(b)(1)(A)(ii) and (iii). As discussed, Complainant filed two prior complaints that also were dismissed as merits-related, frivolous, and unsupported by evidence that would

raise an inference that misconduct occurred. See J.C. Nos. 03-13-90048; 03-13-90075. 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. 03-13-00075. Complainant nonetheless filed the two current complaints, which once again are 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/ Thomas L. Ambro

Circuit Judge

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

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IN RE: COMPLAINTS OF JUDICIAL MISCONDUCT
OR DISABILITY

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

ORDER

Filed: May 30, 2014

PRESENT: AMBRO, Circuit Judge.¹

On the basis of the foregoing opinion entered on this date, it is ORDERED AND ADJUDGED that the written complaints brought pursuant to 28 U.S.C. § 351 are 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.

¹ Acting pursuant to Rule 25(f), Rules for Judicial-Conduct and Judicial-Disability Proceedings.

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/ Thomas L. Ambro
Circuit Judge

Dated: May 30, 2014