

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. Nos. 03-14-90011, 03-14-90012

IN RE: COMPLAINTS OF JUDICIAL MISCONDUCT
OR DISABILITY

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

MEMORANDUM OPINION

(Filed: Filed June 10, 2014)

PRESENT: McKEE, Chief Judge.

These two complaints are filed under the Judicial Conduct and Disability Act, 28 U.S.C. §§ 351-64, against a United States District Judge (“Subject Judge I”) and a United States Circuit Judge (“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).

Since 2010, Complainant has been a pro se litigant in numerous matters in the Bankruptcy Court, District Court, and Court of Appeals. In 2012, the Bankruptcy Court approved a settlement agreement, which limited Complainant's right to file further appeals. Complainant vigorously objects to the settlement agreement and has continued to file appeals in the District Court and the Court of Appeals.

In July 2013, Complainant appealed a Bankruptcy Court decision to the District Court, and the matter was assigned to Subject Judge I. In January 2014, Subject Judge I issued an opinion concluding that the appeal was barred by the settlement agreement. Subject Judge I therefore dismissed the complaint and directed that Complainant "may not file any appeal which would be barred by the terms of the settlement agreement without leave of the district court." Complainant did not appeal Subject Judge I's decision.

In May 2013, Complainant appealed a dismissal order issued in a different District Court proceeding involving a different District Judge. The Court of Appeals dismissed the appeal in light of the settlement agreement. In the dismissal order, Subject Judge II cautioned Complainant that "she may face sanctions if she continues to file appeals that are barred by the settlement agreement."

In the complaint of judicial misconduct concerning Subject Judge I, Complainant recounts issues concerning the merits of the bankruptcy proceedings and the validity of the "Alleged Settlement Agreement." Complainant alleges that Subject Judge I's order dismissing her appeal was an "abuse of discretion and due process" because "[t]he judge made a ruling, and wrote a memorandum/opinion, although she never heard the issue on

either side.” Complainant further alleges that “the Judge’s Memorandum/Opinion cannot be challenged why this is America. To tell her she has to get court approval to appeal, when someone has filed a lawsuit against them, the defendant has a right to appeal . . . and a right to a jury trial which was denied.” Complainant also contends that “to be threatened by the Judge with sanctions and punishment if she appeals this order . . . violates the law and Constitutional Rights of an American Citizen.” In support of the complaint, Complainant appends numerous pages of exhibits, which are largely comprised of excerpts from court documents in her District Court and Bankruptcy Court proceedings.

Similarly, in the complaint of judicial misconduct concerning Subject Judge II, Complainant alleges that Subject Judge II “refused use of discretion and due process, in violation of Appellant’s right to Life, Liberty, and the Pursuit of Happiness, by stating that if she continued to appeal he would impose sanctions. This is not the law.” She explains that “this complaint concerning judicial misconduct, was filed to find out why the Appellant has no rights, when clearly this goes against Rule 501-513 that allows any aggrieved party/estate the right to appeal.”

As an initial matter, I note that both complaints include numerous allegations concerning the conduct of a bankruptcy trustee, a creditor, and other individuals. This judicial misconduct proceeding is not a proper forum for considering the merits of such allegations. To the extent Complainant alleges misconduct on the part of individuals who are not covered by the Judicial Conduct and Disability Act, the 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.

Next, it is apparent that Complainant is attempting to collaterally challenge the dismissal orders issued by Subject Judges I and II. Clearly, she disputes the applicability of the settlement agreement as well as the propriety of the orders limiting her ability to file further litigation as a result of that agreement. This administrative proceeding does not, however, provide Complainant an opportunity to seek review of the merits of the Subject Judges' decisions. 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, it is apparent that Complaint's complaints are entirely merits-related. "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. As Complainant has previously been informed, merits-related disputes do 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. 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.

Considered apart from her merits-related allegations, it is clear that Complainant has provided nothing whatsoever to substantiate any claims of judicial misconduct. Accordingly, to the extent there are any remaining allegations, they are 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.

For the foregoing reasons, the complaints are dismissed pursuant to 28 U.S.C. §§ 352(b)(1)(A)(i), (ii), and (iii). Previously, Complainant filed three judicial misconduct complaints naming a total of twelve Subject Judges. See J.C. Nos. 03-13-90014 through 03-13-90025. Those complaints were dismissed pursuant to 28 U.S.C. §§ 352(b)(1)(A)(i), (ii), and (iii). Because Complainant now has filed a total of five misconduct complaints that have been dismissed under these provisions, Complainant's attention is directed to Rule 10(a), Rules for Judicial-Conduct and Judicial-Disability Proceedings.¹ Complainant

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.

is cautioned that future abuse of the judicial misconduct complaint procedure may result in the imposition of restrictions under this Rule.

s/ Theodore A. McKee
Chief Judge

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ORDER

(Filed: June 10, 2014)

PRESENT: McKEE, Chief Judge.

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)(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 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: June 10, 2014