

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

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J.C. No. 03-16-90019

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IN RE: COMPLAINT OF JUDICIAL MISCONDUCT  
OR DISABILITY

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

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MEMORANDUM OPINION

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(Filed: July 14, 2016)

PRESENT: AMBRO, Circuit Judge.<sup>1</sup>

This is a complaint filed under the Judicial Conduct and Disability Act, 28 U.S.C. §§ 351-64, against a United States District Judge (hereinafter “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). The “misconduct

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

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 alleges that the Subject Judge has engaged in "erratic behaviors" in her case which have resulted in "judicially-assisted representation of a party to an action . . . ." Complainant further alleges that the Subject Judge has been "hostile" towards her. Complainant's sole support for these allegations is her disagreement with the Subject Judge's rulings and scheduling orders in her case; i.e., she complains that the Subject Judge set an "extremely expedited" schedule, required her to register for CM-ECF, and denied her recusal motion. These allegations are plainly merits-related and are not cognizable under the Judicial Conduct and Disability Act. See 28 U.S.C. § 352(b)(1)(A)(ii) (chief judge may dismiss a complaint if he or she finds that it is directly related to the merits of a decision or procedural ruling); Rule 3(h)(3)(A), Rules for Judicial-Conduct and Judicial-Disability Proceedings ("[a]n allegation that calls into question the correctness of a judge's ruling, including a failure to recuse, without more, is merits-related"); Rule 11(c)(1)(B), Rules for Judicial-Conduct and Judicial-Disability Proceedings (a complaint must be dismissed in whole or in part to the extent that the chief judge concludes that the complaint is directly related to the merits of a decision or

procedural ruling).<sup>2</sup> In any event, there is no evidence to support Complainant's allegations of misconduct and they 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.<sup>3</sup>

Complainant further alleges that she has been unable to “find any connection between” the Subject Judge and any of the parties, but that it appears from the “public record” that the Subject Judge has “periodically (approximately every 4 years)” decided to act as an advocate for “one of the ‘sides’ in a case, instead of remaining in his official role of impartial trier-of-fact . . . .” Complainant contends that the Subject Judge's erratic behaviors have occurred “in a pattern which seems to coincide with the Presidential Election Cycle.” Complainant goes on to discuss some newspaper commentary regarding three of the Subject Judge's previous cases, none of which are related to Complainant or her claims in any way. Complainant's allegations about a putative link between the election cycle and the Subject Judge's hostility rest on nothing more than speculation and

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<sup>2</sup> Around the same time that she filed the present complaint of misconduct, Complainant filed a “renewed” recusal motion. Complainant later filed another “renewed” recusal motion. The Subject Judge denied Complainant's recusal motions. These motions contained some of the same allegations that Complainant seeks to raise in these administrative proceedings. To the extent that Complainant is attempting to collaterally attack the Subject Judge's denial of her recusal motions, her complaint is dismissed as merits related. Rule 3(h)(3)(A), Rules for Judicial-Conduct and Judicial-Disability Proceedings.

<sup>3</sup> Complainant recently filed a notice of appeal in her underlying civil action, which is pending at this time. I express no opinion as to the merits of this appeal.

conjecture. Furthermore, the newspaper commentary quoted by Complainant is not evidence of judicial misconduct. Notably, the cases referenced by Complainant were the subject of an appeal or mandamus action, and none of the relevant opinions or orders issued by this Court suggested that the Subject Judge engaged in actions constituting judicial misconduct within the meaning of the Judicial Conduct and Disability Act.

For the foregoing reasons, the complaint is dismissed pursuant to 28 U.S.C. § 352(b)(1)(A)(ii) and (iii). Previously, Complainant filed three other judicial misconduct complaints naming three other judges, each of which was dismissed on similar grounds. See J.C. Nos. 03-12-90036, 03-15-90028, and 03-15-90090. In the opinions dismissing J.C. Nos. 03-15-90028 and 03-15-90090, Complainant was warned that future abuse of the judicial misconduct complaint procedure could result in the imposition of filing restrictions under Rule 10, Rules for Judicial-Conduct and Judicial-Disability Proceedings. Complainant nonetheless filed this complaint, which once again is unsupported. Accordingly, a copy of this Memorandum Opinion and Order will be transmitted to the Judicial Council to determine 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.<sup>4</sup>

s/ Thomas L. Ambro  
Circuit Judge

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<sup>4</sup> 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

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(Filed: July 14, 2016)

PRESENT: AMBRO, Circuit Judge.<sup>1</sup>

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)(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 Circuit Executive within **42 days** after the date of the chief judge's order.

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

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](http://www.ca3.uscourts.gov).

s/ Thomas L. Ambro  
Circuit Judge

Dated: July 14, 2016