

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. Nos. 03-13-90014, 03-13-90015, 03-13-90016, 03-13-90017, 03-13-90018,
03-13-90019, 03-13-90020, 03-13-90021, 03-13-90022,
03-13-90023, 03-13-90024, 03-13-90025

IN RE: COMPLAINTS OF JUDICIAL MISCONDUCT
OR DISABILITY

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

MEMORANDUM OPINION

(Filed: May 31, 2013)

PRESENT: McKEE, Chief Judge.

These complaints are filed under the Judicial Conduct and Disability Act, 28 U.S.C. §§ 351-64, against twelve federal judges: five District Judges (“Subject Judge I” through “Subject Judge V”), one Bankruptcy Judge (“Subject Judge VI”), and six Circuit Judges (“Subject Judge VII” through “Subject Judge XII”).¹ For the reasons discussed below, the complaints will be dismissed.

¹ The complaints include numerous allegations of inappropriate behavior on the part of a bankruptcy trustee, a creditor, and other individuals involved in Complainant’s cases. 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.

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 Bankruptcy Court, District Court, and the Court of Appeals. In three judicial misconduct complaints filed in February 2013, Complainant names a total of twelve judges, all of whom have played some role in Complainant’s numerous federal proceedings. In addition to her statement in support of her judicial misconduct complaints, Complainant has submitted approximately 80 pages of exhibits. Many of the exhibits are portions of court documents, such as letters, orders, and transcripts, which bear Complainant’s handwritten annotations concerning her misconduct claims.

A review of the complaints and supporting documents reveals that the majority of Complainant’s allegations relate to her underlying bankruptcy proceeding before Subject Judge VI. Complainant filed for bankruptcy in early 2010, then attempted to withdraw the petition later that year. Complainant alleges that Subject Judge VI denied the request to withdraw the petition and, according to Complainant, “[t]his denial [by Subject Judge VI] resulted in me being forced to stay in bankruptcy against my wishes.”

In addition, Complainant contends that Subject Judge VI mishandled her bankruptcy proceeding and the related adversary proceedings that stemmed from it. Among other things, Complainant alleges Subject Judge VI enforced “a settlement agreement that did not exist” and ordered distribution of Complainant’s estate “amongst individuals who were non-parties and non-creditors to the case.” She further alleges that “[c]ases lay dormant [sic] until 10/2012 when dismissed as moot after distributing estate; held in Bankruptcy even though filed 2/18/10 and ask to be dismissed 9/1/10; all 7 adversary hearing filed after 7/19/10 and never judicially ruled on.” Complainant states broadly that her case “has been riddled with Fraudulent Conveyance, and Civil Conspiracy, that I believe is present in front of the bench, but also behind the bench. All of the evidence points to the validity of my beliefs.”

Clearly, the majority of Complainant’s allegations reflect her disagreement with Subject Judge VI’s decisions and rulings. “An allegation that calls into question the correctness of a judge’s ruling . . . without more, is merits-related.” Rule 3(h)(3)(A), Rules for Judicial-Conduct and Judicial-Disability Proceedings. Merits-related allegations are not cognizable judicial misconduct. Id.

Indeed, Complainant raised many of these same allegations concerning Subject Judge VI in the course of her appeals to the District Court. For instance, she presented her allegations concerning the allegedly fraudulent settlement agreement to Subject Judges I and V, who both determined that Complainant’s failure to appeal Subject Judge VI’s conclusions concerning the validity of the settlement agreement resulted in her being

bound by that agreement. Subject Judge I and V's determinations are not subject to collateral attack in this proceeding. 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). Thus, because they are not cognizable in this proceeding, 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.

Apart from the merits-related claims, Complainant vaguely alleges "fraud" on the part of Subject Judge VI, without further explanation or support. For instance, one of the exhibits to the complaint is an order by Subject Judge VI, which amends a caption on a prior order. In handwritten annotations on the order, Complainant writes, "Fraud. . . . Court error - abuse discretion," and provides reasons why she disagrees with Subject Judge VI's order. It is readily apparent that Complainant's suspicions of fraud rely entirely upon her disagreement with the substance of the order and nothing more. A review of the record reveals no evidence of fraud or any other form of judicial misconduct. Accordingly, to the extent the allegations against Subject Judge VI are not merits-related, they are frivolous and unsupported by evidence that would raise an inference that misconduct occurred. Accordingly, they are dismissed. See 28 U.S.C.

§ 352(b)(1)(A)(iii); Rule 11(c)(1)(C), (D), Rules for Judicial-Conduct and Judicial-Disability Proceedings.

In the course of discussing her allegations concerning Subject Judge VI, Complainant includes scattered allegations concerning several of the named District Judges, before whom she appeared in her appeals from Subject Judge VI's decisions and rulings, as well as in other civil proceedings that Complainant initiated in District Court. Rather than clearly or expressly alleging any misconduct on the part of any of the District Judges, however, Complainant generally describes some of their decisions and rulings and states, without meaningful explanation, that the proceedings were all a sham.

For instance, Complainant alleges that one of her cases before Subject Judge II was “a Rous [*sic*]” because “no hearing [was] held” and because “the Judge dismissed my complaint with prejudice.” Similarly, she alleges that, in a case before Subject Judge IV, the Judge “affirmed [Subject Judge VI's] decision, using bad faith, no hearing held. . . it was a Rous.”

Complainant also appends to her complaint several orders issued by the named District Judges. For instance, she includes an order issued by Subject Judge II, which granted a motion to dismiss in one of Complainant's cases. On it, Complainant has written her reasons for disagreeing with the decision: “I was not barred from filing my complaint! I had 2 yrs to file – did file timely!” Similarly, she includes an order issued by Subject Judge I, which affirmed a Bankruptcy Judge's order. She notes on that the

caption for the order allegedly incorrectly lists her daughter as an appellee, and writes, “fraud” at the bottom of the page.²

These allegations are primarily merits-related and not cognizable in this proceeding. 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. To the extent Complainant alleges “fraud” or a “rous [*sic*]” on the part of Subject Judges I through V, the allegations are vague and conclusory, and appear to be based exclusively upon Complainant’s non-cognizable merits-related allegations. Accordingly, these allegations are dismissed as frivolous and unsupported by evidence that would raise an inference that misconduct occurred. See 28 U.S.C. § 352(b)(1)(A)(iii); Rule 11(c)(1)(C), (D), Rules for Judicial-Conduct and Judicial-Disability Proceedings.

With regard to the six named Circuit Judges, Subject Judges VII through XII, Complainant provides a handwritten list of four allegations, which appear broadly to relate to four of her appeals, which have all been dismissed. The list of allegations reads in full:

- * Put on wrong parties name; Fraud; [case citation omitted]
- * Seven adversaries held in Bankruptcy Court since 2010 & 10/24/12
dismiss as moot without hearing; issues on appeal.
- * Denial of motion allowed to be heard
- * Motion to discharge file in 14 days; never heard; dismiss as moot; cause
new appeals; use legal tactics

² Complainant filed a motion to amend the caption in this matter, which Subject Judge I denied.

Notably, none of these allegations identifies any specific action taken by any particular Subject Judge, and the first two allegations do not relate to actions taken by any of the named Circuit Judges during the course of the appeals at all. Rather, they are explanations of Complainant's reasons for filing her appeals in the first place and, as a factual matter, these allegations do not raise any inference that Subject Judges VII through XII engaged in any form of judicial misconduct.³ See 28 U.S.C. § 352(b)(1)(A)(iii); Rule 11(c)(1)(D), Rules for Judicial-Conduct and Judicial-Disability Proceedings. While the second two allegations concern Complainant's appeals, the allegations are clearly merits-related and are therefore subject to dismissal on that basis. 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.

Finally, Complainant alleges that one of her appeals "set dormant," thereby allowing "the trustee time to seize my estate and allowed the bankruptcy court the time to issue to court orders . . . to authorize the trustee . . . to distribute my estate without a hearing. . . ." A claim of delay in a single proceeding may qualify as cognizable misconduct only where "the allegation concerns an improper motive in delaying a particular decision. . . ." Rule 3(h)(3)(B), Rules for Judicial-Conduct and Judicial-Disability Proceedings.

Complainant does explicitly not allege improper motive on the part of any of the named Circuit Judges, nor does the record provide any evidence to substantiate such a

³ To the extent these allegations reiterate Complainant's claims concerning Subject Judges I through V, they are merits-related, as previously discussed.

claim. Moreover, as a factual matter, the record does not reflect undue delay or any periods in which Complainant's appeals "set dormant." Rather, the docket sheets for the four appeals reflect substantial activity, including a large number of motions, petitions, and other miscellaneous documents that Complainant chose to file, and which clearly required a great deal of court time to consider and resolve. It is apparent that Complainant's allegations of delay are frivolous and unsupported by evidence that would raise an inference that misconduct has occurred. Accordingly, they are dismissed. 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)(i), (ii), and (iii).

/s Theodore A. McKee
Chief Judge

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

ORDER

(Filed: May 31, 2013)

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 Circuit Executive of the Court of Appeals within **35 days** of the date on the letter informing the parties of the Chief Judge's order.

18(b) Form. The petition should be in letter form, addressed to the Circuit Executive 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 Office of the Circuit Executive 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: May 31, 2013