

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. Nos. 03-14-90003, 03-14-90006

IN RE: COMPLAINTS OF JUDICIAL MISCONDUCT
OR DISABILITY

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

MEMORANDUM OPINION

(Filed: March 31, 2014)

PRESENT: McKEE, Chief Judge.

These 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 Magistrate 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).

In 2012 and 2013, Complainant filed three pro se complaints concerning her allegedly wrongful eviction from her apartment, which were all assigned to the same presiding District Judge (the “Presiding Judge”). In August 2013, in the first of the proceedings, the Presiding Judge granted the defendants’ motions to dismiss, but permitted Complainant to seek leave to file an amended complaint. Complainant did not seek leave to amend and, in January 2014, the Presiding Judge dismissed that complaint with prejudice. Complainant did not appeal. The second and third complaints remain pending.

In November 2013, Complainant filed her first complaint of judicial misconduct, naming the Presiding Judge as the Subject Judge. See J.C. No. 03-13-90082. Her allegations pertained primarily to the Presiding Judge’s August 2013 order, which she contended contained “lies about key facts of the case” and resulted in a denial of her rights. Complainant also alleged more generally that the Presiding Judge took bribes from the defendants, “sabotaged” her case, was “racist and corrupt,” and unduly delayed all three of her cases. After careful consideration of these allegations and a review of the record in the proceedings, I entered an opinion on February 12, 2014, dismissing Complainant’s allegations against the Presiding Judge as merits-related, frivolous, and lacking in evidentiary support. See J.C. No. 03-13-90082.

In these two new complaints of judicial misconduct, filed in January and February 2014, Complainant presents allegations of misconduct as to Subject Judge I, the Chief Judge of the District Court in which the Presiding Judge sits, and Subject Judge II, the

Magistrate Judge who oversaw Complainant's cases with the Presiding Judge. In these complaints, Complainant reiterates and expands upon the same allegations that she previously raised against the Presiding Judge in her prior complaint of judicial misconduct.

Specifically, Complainant alleges that Subject Judge I is conspiring with the Presiding Judge and Subject Judge II "against my rights to deprive [me] of my home and a fair jury trial," and that the three judges are "illegal[ly] barring me from my home." According to Complainant, Subject Judge I engaged in misconduct because Complainant "made over three requests [to Subject Judge I] to remove [the Presiding Judge] off all my cases," but Subject Judge I did not comply with her requests.¹ She states that Subject Judge I "has done nothing and allowed [the Presiding Judge] to continue violating the U.S. Constitution and my rights in violation of his job description." Complainant contends this demonstrates that "this is [a] racist and corrupt court."

In addition, Complainant alleges that Subject Judge II, with the Presiding Judge, was "taking bribes from the Defendants to cover up the crimes they committed against me by dismissing all my cases before the Defendants have to answer one question."

Complainant further alleges that Subject Judge II "did whatever she could to delay my case," including granting an extension permitting the defendants additional time to respond to interrogatories. Complainant states that Subject Judge II and the Presiding

¹ Complainant also filed recusal motions directly with the Presiding Judge, who declined to recuse himself. In J.C. No. 03-13-90082, Complainant's allegations challenging the Presiding Judge's decision not to recuse were dismissed as merits-related.

Judge are “crooks who believe that they could get away with stealing my home and above the law.” She states that Subject Judge II “needs to be off the bench, have her bar license stripped and held criminally accountable for Color of Law violations.”

It is clear that many of Complainant’s allegations are intended to challenge judicial decisions and rulings, including the Presiding Judge’s failure to recuse and Subject Judge II’s discovery-related decisions. In addition, in both complaints, Complainant reiterates her numerous disagreements with the merits of the Presiding Judge’s decision of August 2013 to dismiss her first civil complaint. Because these allegations call into question the correctness of judicial decisions and rulings, they are all 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.”).

Merits-related allegations are not appropriately raised in a judicial misconduct 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). Because the allegations do not set forth cognizable 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.

Apart from her merits-related claims, Complainant offers nothing whatsoever to substantiate her serious allegations of misconduct, including bribery, thievery, conspiracy, and racism. The record provides absolutely no support for such claims. Accordingly, these 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.

Finally, Complainant alleges that Subject Judge II has intentionally delayed the progress of her cases. Generally, delay is not cognizable as judicial misconduct, as it effectively poses a challenge to merits of an official action by the judge – *i.e.*, the decision to assign a lower priority to a particular case.² See Rule 3 Commentary, Rules for Judicial-Conduct and Judicial-Disability Proceedings. As previously discussed, merits-related claims are not cognizable under the Judicial Conduct and Disability Act. 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. A claim of delay may qualify as cognizable judicial misconduct, however, if “the allegation concerns an improper motive in delaying a particular decision or habitual delay in a significant number of unrelated cases.” Rule 3(h)(3)(B), Rules for Judicial-Conduct and Judicial-Disability Proceedings.

The record reveals that there have been no periods of undue delay in Complainant’s cases. Because Complainant’s claim of delay is entirely lacking in a factual basis, it is

² To the extent the allegation of delay is intended to challenge a particular decision by Subject Judge II to grant an extension of time, this is a merits-related allegation, which, as discussed previously, is subject to dismissal. 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.

dismissed as frivolous and unsupported by 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). Because Complainant has filed three misconduct complaints that have been dismissed under these provisions, see J.C. Nos. 03-13-90082, 03-14-90003, and 03-14-90006, Complainant's attention is directed to Rule 10(a), Rules for Judicial-Conduct and Judicial-Disability Proceedings.³ In addition, because Complainant's business colleague has filed substantially similar complaints that have been dismissed under the same provisions, see J.C. No. 03-13-90092, 03-13-90093, Complainant's attention also is directed to Rule 10(b), Rules for Judicial-Conduct and Judicial-Disability Proceedings.⁴ Complainant is cautioned that future abuse of the judicial misconduct complaint procedure may result in the imposition of restrictions under these provisions.

³ 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.

⁴ Rule 10(b), Rules for Judicial-Conduct and Judicial-Disability Proceedings, states:

s/ Theodore A. McKee
Chief Judge

Orchestrated Complaints. When many essentially identical complaints from different complainants are received and appear to be part of an orchestrated campaign, the chief judge may recommend that the judicial council issue a written order instructing the circuit clerk to accept only a certain number of such complaints for filing and to refuse to accept further ones. The clerk must send a copy of any such order to anyone whose complaint was not accepted.

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ORDER

(Filed: March 31, 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)(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: March 31, 2014