

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. Nos. 03-14-90041, 03-14-90042

IN RE: COMPLAINT OF JUDICIAL MISCONDUCT
OR DISABILITY

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

MEMORANDUM OPINION

(Filed: October 21, 2014)

PRESENT: McKEE, Chief Judge.

This complaint is filed under the Judicial Conduct and Disability Act, 28 U.S.C. §§ 351-64, against a United States Magistrate Judge (“Subject Judge I”) and a United States District Judge (“Subject Judge II”). 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).

Over the past few years, Complainant has been a pro se plaintiff, on behalf of herself and her siblings, in several civil rights actions before the two Subject Judges. The

civil rights complaints named numerous defendants and sought recovery of hundreds of billions of dollars in damages. They were dismissed and the dismissals were affirmed on appeal. In one case, Subject Judge II issued an order that denied Complainant leave to proceed *in forma pauperis* or, in the alternative, granted such status and dismissed the complaint with prejudice and without leave to amend. On appeal, the Court of Appeals affirmed the decision.

During the course of these proceedings, Complainant has filed a number of motions reflecting her dissatisfaction with the Subject Judges' handling of her cases. In December 2013, the Chief Judge of the District Court (who is not named as a Subject Judge of this complaint) issued an order construing the submissions as motions for reassignment pursuant to a local procedural rule. The Chief Judge decided that reassignment was not warranted.

In this rambling and largely unintelligible complaint of judicial misconduct, Complainant alleges that “the act of judicial misconduct is happening. . .” and that it is “continually as it’s affecting my health greatly and as I keep being dealt the unlawful acts of certain government officials thinking it right to harass me and in a retaliative mannerism as I handle matters in court properly. . . .” Among other things, Complainant appears to disagree with the manner in which Subject Judge II has handled her requests to proceed *in forma pauperis*. She alleges, “[Subject Judge II] picked and chose what claim to approve a fee waiver for thereby citing a misconduct of malfeasance and retaliation happening. . .,” and further alleges, “I had no money to do anything, them thought to play

games with my stated request and them played with my health stance and my stated simple request . . . them all retaliated and knowingly and that with the stance of what had already happened. . . .” In addition, Complainant appears to allege that the two Subject Judges improperly denied requests that her cases be expedited: “I requested expiated [*sic*] handling due to health reasoning as per say the fact stance of what those lawsuit presents . . . my right and those lawsuit right should not be continually violated. . . .” She concludes, “I note now that them all keep giving me a hard time and for no good reason thereby me citing judicial misconduct here too.”¹

To the extent these allegations are intended to collaterally challenge decisions and rulings rendered by Subject Judges I and II in the course of Complainant’s civil rights actions, the allegations are merits-related. “An allegation that calls into question the correctness of a judge’s ruling, including a failure to recuse, without more, is merits-related.” Rule 3(h)(3)(A), Rules for Judicial-Conduct and Judicial-Disability Proceedings. A judicial misconduct proceeding is not the appropriate forum for raising merits-related allegations.

Indeed, Complainant has already presented many of her allegations in the course of her motions seeking to have new judges assigned to her cases, and also in her merits appeals. This administrative forum does not provide Complainant another opportunity to

¹ In the complaint, Complainant also alleges wrongdoing by individuals not covered by the Judicial Conduct and Disability Act, such as clerk’s office personnel, court security guards, and others. Such 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.

revisit the merits of those 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).

Merits-related allegations are not cognizable misconduct 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 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). Accordingly, these allegations are dismissed.

Complainant further alleges that she “should not be retaliated against or harassed or treated to discrimination as I handle matters in court pro se. . .” and that “none has the right to bully me as I handle matters in court. . . .” In addition, she peppers the complaint with vague but serious allegations including bribery, corruption, criminal activity, physical abuse, malfeasance, perjury, and other forms of misconduct. Complainant has failed to provide any evidence whatsoever to substantiate these claims. The record provides no basis for finding that either Subject Judge I or Subject Judge II engaged in any form of misconduct. Accordingly, Complainant’s non-merits-related allegations 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.

Finally, in a series of supplements to the complaint of misconduct, Complainant raises allegations concerning a number of Circuit Judges who denied a petition for rehearing. Complainant did not identify these Circuit Judges as Subject Judges of the complaint. Accordingly, I have considered these allegations pursuant to Rule 5, Rules for Judicial-Conduct and Judicial-Disability Proceedings. I conclude that the allegations do not provide “reasonable grounds for inquiry” into the existence of misconduct or disability as to any of the referenced Circuit Judges. Therefore, I decline to identify any complaints based on these allegations. Rule 5, 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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ORDER

(Filed: October 21, 2014)

PRESENT: McKEE, Chief Judge.

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 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: October 21, 2014