

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. No. 03-14-90052

IN RE: COMPLAINT OF JUDICIAL MISCONDUCT
OR DISABILITY

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

MEMORANDUM OPINION

Filed: August 13, 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 District Judge (the “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).

Complainant has been a pro se litigant in numerous matters in the Bankruptcy Court, District Court, and the 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 both the District Court and the Court of Appeals.

In July 2013, Complainant appealed a Bankruptcy Court decision to the District Court. The appeal was assigned to the Subject Judge. In September 2013, the Subject Judge issued a memorandum order concluding that the appeal was barred by the settlement agreement. The Subject Judge therefore dismissed the appeal and closed the case. Complainant filed a notice of appeal, which is pending before the Court of Appeals.

Complainant states that she has filed this complaint of judicial misconduct because "[the Subject Judge] has issued a Memorandum Order that should not have been enforced for it was a violation of Rule 41(a)(1)(A)(i), FRAP 42. He ruled granting the Appellee's . . . Motion to Dismiss my, Appellant's Appeal, and threatened me, if I appeal with possible sanctions." Among other things, Complainant argues that the decision dismissing her District Court appeal was legally incorrect because the Subject Judge did not hold a hearing and relied upon the reasoning of other District Judges. Complainant argues that this demonstrates that he used "HEARSAY to make a ruling" and violated her constitutional rights. Complainant further alleges that the Subject Judge warned her "with threats" if she were to file an appeal from his decision. In addition to the allegations concerning the Subject Judge, Complainant also recounts in detail the many issues

concerning the merits of the bankruptcy proceedings and the validity of the “Alleged Settlement Agreement,” which, she contends, is “far from the truth.”¹

Clearly, the primary purpose of this complaint is to challenge the memorandum order issued by the Subject Judge. “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. This administrative proceeding is not an opportunity for Complainant to raise merits-related claims. 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).

Indeed, Complainant has a pending appeal at this time. Complainant’s merits-related arguments are appropriately raised in her merits appeal, not in this judicial misconduct proceeding. As Complainant previously has been informed, merits-related disputes do not constitute cognizable judicial 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 in this

¹ In discussing the history of her bankruptcy and District Court proceedings, Complainant raises numerous allegations concerning individuals who are not covered by the Judicial Conduct and Disability Act, including a bankruptcy trustee, a creditor, and others. Because this judicial misconduct proceeding is not a proper forum for considering the merits of such allegations, they 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.

forum, 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 the merits-related allegations, it is clear that Complainant has provided nothing to substantiate her remaining claims. Complainant states, for instance, that the Subject Judge is part of a “conspiracy” and is “working together in concert” with other judges “all ruling the same way.” The Subject Judge’s decision to rely on the reasoning of fellow judges is not evidence of a conspiracy, and any disagreement with that reasoning, as previously discussed, is merits-related. In addition, Complainant characterizes the Subject Judge’s memorandum order as containing a “threat.” A review of that order reveals that it is not threatening in any respect. Accordingly, Complainant’s remaining 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.

For the foregoing reasons, the complaint is dismissed pursuant to 28 U.S.C. §§ 352(b)(1)(A)(i), (ii), and (iii).² Complainant previously has filed five separate judicial misconduct complaints naming a total of fourteen Subject Judges. See J.C. Nos. 03-13-

² The complaint sets forth allegations concerning the Bankruptcy Judge and several other District Judges who have presided over Complainant’s various proceedings, although Complainant did not choose to name any other judges as Subject Judges in this 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 District Judge. I therefore decline to identify any complaints based upon these allegations. Rule 5, Rules for Judicial-Conduct and Judicial-Disability Proceedings.

90014 through 03-13-90025, 03-14-90011, and 03-14-90012. Those complaints all were dismissed pursuant to 28 U.S.C. §§ 352(b)(1)(A)(i), (ii), and (iii). In the opinion resolving J.C. Nos. 03-14-90011 and 03-14-90012, Complainant expressly was cautioned that continued abuse of the judicial misconduct complaint procedure could result in the imposition of restrictions on her ability to file new complaints. Complainant nonetheless filed the current complaint, which once again is merits-related, frivolous, and unsupported by sufficient evidence.

Accordingly, a copy of this Memorandum Opinion and Order will be transmitted to the Judicial Council for consideration of 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.

s/ Theodore A. Mckee
Chief Judge

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IN RE: COMPLAINT OF JUDICIAL MISCONDUCT
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ORDER

Filed: August 13, 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: August 13, 2014