

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

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J.C. Nos. 03-14-90062, 03-14-90069, 03-14-90070, 03-14-90071

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IN RE: COMPLAINTS 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: August 27, 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 three United States Circuit Judges (“Subject Judge II,” “Subject Judge III,” and “Subject Judge IV”). 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).

Complainant filed a pro se complaint against her former employer in which she claimed racial discrimination and retaliation. The matter was assigned to Subject Judge I.

The employer filed a motion to dismiss the complaint and Complainant filed a motion for a default judgment. In April 2013, Subject Judge I held a hearing on the motions. Shortly after the hearing, Subject Judge I entered an order granting the employer's motion to dismiss "for the reasons stated in open court." Complainant filed a notice of appeal. Subject Judges II, III and IV affirmed the judgment. Complainant petitioned for rehearing and moved for Subject Judge II's recusal. Complainant's petition for rehearing and motion for recusal were denied.

Complainant has filed complaints of judicial misconduct naming four Subject Judges. The first complaint, which names Subject Judge I, alleges that "[i]t is complainant's belief that [Subject Judge I] not only committed 'plain error' in fact-determination and the law in resolve [*sic*] this case, but also violated the codes set forth in the Code of Judicial Conduct and Disability, the Code for United States Judges, and committed the crime set forth in the Model Penal Code." Specifically, Complainant alleges that, at the April 2013 hearing, defense counsel was able to enter the locked courtroom in advance of the hearing, while Complainant had to wait outside until ten minutes before the hearing began. At that time, she "wondered if [defense counsel] was having a meeting with the court." Complainant also was "shocked" because the courtroom deputy told her "the case would be dismissed at the hearing."

Complainant further alleges that Subject Judge I wrongfully denied entry of a default judgment, and that defense counsel made an "obviously false" statement concerning his receipt of the complaint and the untimeliness of his answer to the

complaint. Complainant also alleges that the transcript of the April 2013 was altered or improperly transcribed. Among other things, Complainant recalls that defense counsel stated that he had found a copy of the complaint “on our office floor in a brown paper envelope,” but the statement does not appear on the hearing transcript. She therefore “believes [the statement] was deleted.” Because Complainant informed Subject Judge I of her concerns by filing a “notice of altered transcript,” she accuses him of “approving altered or altering [the] court hearing transcript.”

In the complaints naming Subject Judges II, III, and IV, Complainant alleges that the panel of the Court of Appeals comprised of Subject Judges II, III, and IV “departed from and violated the standard of review” that applied in her case, and that the panel’s opinion “is replete with false information about material facts of the case.” In addition, Complainant notes that the panel failed to mentioned her allegations about the altered hearing transcript. Finally, she alleges that Subject Judge II wrongfully failed to recuse herself, for the reasons set forth in Complainant’s motion to recuse.

The majority of the allegations concerning Subject Judge I and all of the allegations concerning Subject Judges II, III, and IV 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. Complainant’s allegations clearly reflect her fundamental disagreement with Subject Judge I’s decision to deny a default judgment and dismiss the complaint, the decision by Subject Judges II, III, and IV to affirm the dismissal, and Subject Judge II’s

failure to recuse herself. This proceeding is not the appropriate forum for raising such allegations. 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). Complainant’s merits-related allegations are therefore dismissed.

Complainant’s remaining allegations all pertain to Subject Judge I – specifically, her suspicions stemming from defense counsel’s ability to enter the courtroom before her and her concerns that Subject Judge I altered or approved alterations to the transcript of the April 2013 hearing. With regard to the first allegation, accepting Complainant’s statement that defense counsel was permitted entry to the courtroom before her, she provides nothing to support her conclusion that defense counsel had any inappropriate contact with Subject Judge I during that time. With regard to the second allegation, I note that the copy of the transcript appearing on the public docket was certified by the court

reporter who transcribed it. To the extent the transcript does not match Complainant's memory or her own review of the audio recording of the hearing, such discrepancies cannot be attributed to any action by Subject Judge I. To the extent Complainant contests Subject Judge I's decision not to act on her "notice of altered transcript," the allegation is merits-related. Accordingly, all of Complainant's remaining 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.

For the foregoing reasons, the complaints are dismissed pursuant to 28 U.S.C. §§ 352(b)(1)(A)(ii) and (iii). Complainant's attention is directed to Rule 10(a), Rules for Judicial-Conduct and Judicial-Disability Proceedings, concerning abuse of the complaint procedure.<sup>1</sup> Future abuse of the misconduct procedures could result in the imposition of sanctions under that rule.

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<sup>1</sup> 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.

s/ Theodore A. Mckee  
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Chief Judge

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ORDER

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Filed: August 27, 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](http://www.ca3.uscourts.gov).

s/ Theodore A. Mckee  
Chief Judge

Dated: August 27, 2014