

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. No. 03-14-90096

IN RE: COMPLAINT OF JUDICIAL MISCONDUCT
OR DISABILITY

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

MEMORANDUM OPINION

(Filed: February 17, 2015)

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).

In early 2013, Complainant, with several family members, filed a pro se civil rights complaint in state court raising constitutional claims stemming from her son’s allegedly

wrongful arrest. The matter was removed to District Court and, after several months before a different presiding District Judge, was assigned to the Subject Judge in July 2013.

In early 2014, the Subject Judge dismissed a number of the plaintiffs' claims and directed them to file an amended complaint against the remaining defendants. The plaintiffs did so. One defendant filed a motion to dismiss, and discovery was stayed for some time pending resolution of the motion. Although the docket does not reflect the disposition of the motion to dismiss, the stay was later lifted. Several defendants have since filed a motion for summary judgment, which remains pending, and the plaintiffs have filed a motion to compel discovery, which also remains pending. Most recently, in October 2014, the Subject Judge ordered that discovery be completed by February 2015.

This complaint of judicial misconduct was received in November 2014. It appears Complainant intended to file it as part of her prior judicial misconduct proceeding against the Subject Judge, J.C. No. 03-13-90079; she refers to that case number and describes this complaint as a "[f]ollow up to previous inquiry." The prior misconduct proceeding has, however, been closed since March 2014. Accordingly, the above-captioned case number was assigned for purposes of permitting Complainant to raise any new allegations against the Subject Judge.

In this new matter, Complainant raises a number of questions concerning the progress of the proceeding before the Subject Judge. For instance, she queries, "Is the Court obligated to review the transcript of [Complainant's son's] criminal docket . . . ? If so, it would reveal error(s) in the beginning of [his] criminal case along with ineffective

assistance of counsel. . . .” In addition, she asks, “Has the court reviewed the submitted exhibits included with the complaint, made any determination as to notifying other authorities . . . to investigate? If so, what is the status?”

Complainant further alleges that “I, we have reported abuse of the elderly, disabled and the act of extorting money from the elderly, disabled and dying. . . . It would appear these officers of the Court and those retained by the Court have no integrity, feel no responsibility to do their civic duties but rather harass, extort money from those who are unable to defend themselves, the disabled . . . and the elderly.” Complainant concludes, “Can the Plaintiffs do anything to assist and speed up the process with the investigation and clear this matter off the Court’s calendar?”

To the extent Complainant’s questions indicate that she disagrees with the Subject Judge’s decisions and rulings – for instance, decisions concerning whether to consider certain transcripts and exhibits – such 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. 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).

In addition, Complainant's questions may be construed as raising a claim that her case before the Subject Judge has been unduly delayed. If so, as Complainant previously was informed in the opinion dismissing J.C. No. 03-13-90078, delay in a single case generally is not cognizable as judicial misconduct, as it effectively poses a merits-related challenge to an official action by the judge – *i.e.*, the decision to assign a lower priority to the case. See Rule 3 Commentary, Rules for Judicial-Conduct and Judicial-Disability Proceedings. Although a claim of delay in a single proceeding may qualify as cognizable misconduct where “the allegation concerns an improper motive in delaying a particular decision. . . .,” see Rule 3(h)(3)(B), Rules for Judicial-Conduct and Judicial-Disability Proceedings, Complainant does not allege improper motive on the part of the Subject Judge. Although she states, without explanation or support, that unspecified “officers of the Court” lack “integrity,” this allegation is far too vague and imprecise to reasonably establish improper motive on the part of the Subject Judge. Accordingly, such 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, to the extent Complainant is requesting intervention in the District Court matter in order to speed its progress, a complaint of judicial misconduct is an entirely inappropriate manner in which to request such relief. Complainant should consider

whether there is available recourse within the context of her case, such as a motion directed to the Subject Judge, or, if appropriate, by filing a petition for a writ of mandamus in the Court of Appeals. Such options pertain to the merits of her case, and are therefore outside the scope of this administrative 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.

For the foregoing reasons, the complaint is dismissed pursuant to 28 U.S.C. §§ 352(b)(1)(A)(ii) and (iii). Complainant's attention is once again directed to Rule 10(a), Rules for Judicial-Conduct and Judicial-Disability Proceedings.¹ In addition, Complainant appears to have prepared a second complaint on behalf of her parents, which has been dismissed under these provisions. See J.C. No. 03-14-90097. Accordingly, Complainant's attention also is directed to Rule 10(b), Rules for Judicial-Conduct and Judicial-Disability Proceedings.² Complainant is cautioned that future abuse of the

¹ 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.

² Rule 10(b), Rules for Judicial-Conduct and Judicial-Disability Proceedings, states:

judicial misconduct complaint procedure may result in the imposition of restrictions under these provisions.

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: February 17, 2015)

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)(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: February 17, 2015