

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. No. 03-15-90028

IN RE: COMPLAINT OF JUDICIAL MISCONDUCT
OR DISABILITY

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

MEMORANDUM OPINION

(Filed: August 24, 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).

Complainant is a frequent pro se litigant who has filed numerous civil actions over the course of several years, all concerning her former attorneys’ alleged mishandling of a state court criminal case that subsequently resulted in the termination of her parental

rights. In 2012, a Magistrate Judge, who is not named as a Subject Judge in this proceeding, issued an order to show cause against Complainant because she had filed at least seven civil complaints asserting substantially similar facts and causes of action against the same defendants. After a show cause hearing, the Subject Judge issued an order dismissing Complainant's then most recent complaints, designating Complainant as a vexatious litigant, and directing that all of her future filings be screened by the Subject Judge, who would strike all complaints related to or arising from the same facts and causes of action. The Subject Judge's order also warned Complainant that any continued use of abusive language, filing of frivolous motions, or failure to comply with court orders could result in the imposition of further sanctions and a possible order of contempt. Complainant appealed. The Court of Appeals summarily affirmed the order.

In 2015, Complainant filed a new civil complaint naming several of her former attorneys. Shortly after the complaint was docketed, the Subject Judge dismissed it with prejudice as barred by the terms of the prior anti-filing order, noting that "further blatant disregard" of that order would result in sanctions. Complainant moved for reconsideration, arguing that the claims in the complaint were distinct from the topics subject to the anti-filing order. Complainant also moved for the Subject Judge's recusal and for "special relief," arguing that the Subject Judge had improperly reviewed and relied upon adoption records that should have been sealed in state court. The Subject Judge summarily denied Complainant's motions. Complainant appealed and the appeal remains pending.

This is Complainant’s second complaint of judicial misconduct.¹ This misconduct complaint is concerned entirely with the Subject Judge’s oversight of the 2015 civil complaint. In it, Complainant alleges that the Subject Judge “ignored” her claims that certain private attorneys improperly filed in state court certain sealed adoption documents, thereby rendering them publicly available. Complainant further alleges that the Subject Judge inappropriately considered those adoption documents and refused to “re-seal” them, and that this alleged “refusal to now seal the Adoption Record which she improperly permitted to be released . . . appears to directly involve [the Subject Judge] in the *cover-up of the crimes* in the earlier cases!” Complainant contends that the Subject Judge’s “involvement in crimes committed by defendants and their lawyers in those earlier cases, by ‘concealing’ the fact that they did commit a crime, implicates [the Subject Judge] in those crimes as well – and requires that [the Subject Judge] be investigated. . . .”

Upon review, it is apparent that Complainant raised many, if not all, of these claims concerning the allegedly sealed adoption documents in her filings before the Subject Judge – in particular, in her motions for recusal and for “special relief.” The Subject Judge denied those motions. Therefore, to the extent that Complainant’s allegations are intended to challenge the Subject Judge’s decision to deny the motions, the allegations are merits-related. “An allegation that calls into question the correctness of a judge’s ruling,

¹ The first complaint, which was filed in 2012, named the same Magistrate Judge who issued the order to show cause against Complainant, but the complaint concerned his actions in a different civil proceeding. See J.C. No. 03-12-90036. That complaint was dismissed as merits-related, frivolous, and unsupported by evidence sufficient to raise an inference of misconduct.

including a failure to recuse, without more, is merits-related.” Rule 3(h)(3)(A), Rules for Judicial-Conduct and Judicial-Disability Proceedings.

Indeed, Complainant currently is pursuing a merits appeal of the Subject Judge’s decisions in the Court of Appeals. It would not be appropriate to consider in this administrative proceeding the same claims that are likely to be presented to the Court of Appeals in that pending appeal. 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 do not constitute 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, Complainant’s allegations are dismissed.

When considered apart from the merits-related allegations, Complainant’s claims of inappropriate conduct on the part of the Subject Judge, including the alleged “concealing” of wrongdoing by private attorneys in a state court proceeding, are entirely unsubstantiated. The record reflects no wrongdoing by the Subject Judge. Even if it were

accepted as true for purposes of this opinion that certain private attorneys wrongfully disclosed confidential documents in a state court proceeding, none of those alleged actions would implicate the Subject Judge, who is a federal judge and did not oversee the state court proceeding. Notably, the record in Complainant's 2015 civil case does not appear to contain a copy of any potentially confidential or sensitive documents, and the attorneys named as defendants were not served and never participated. Thus, Complainant's non-merits-related claims are both frivolous and unsupported by evidence that would raise an inference that misconduct has occurred. They are therefore dismissed. 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)(ii) and (iii). Because this is Complainant's second complaint of judicial misconduct to be dismissed under these provisions, Complainant's attention is directed to Rule 10(a), Rules for Judicial-Conduct and Judicial-Disability Proceedings.² Complainant

² 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.

is cautioned that abuse of the judicial misconduct complaint procedure may result in the imposition of restrictions under this rule.

s/ Theodore A. McKee
Chief Judge

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ORDER

(Filed: August 24, 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: August 24, 2015