

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. Nos. 03-16-90076; 03-16-90092; 03-16-90093

IN RE: COMPLAINT OF JUDICIAL MISCONDUCT
OR DISABILITY

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

MEMORANDUM OPINION

(Filed: April 27, 2017)

PRESENT: SMITH, *Chief Judge*.

This is a complaint filed under the Judicial Conduct and Disability Act, 28 U.S.C. §§ 351-64, against two United States Magistrate Judges (“Subject Judge I” and “Subject Judge II”) and a United States District Judge (“Subject Judge III”). 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 former employee of the District Court Clerk's Office. In 2008 and 2009, she unsuccessfully pursued confidential administrative remedies against that office based upon her allegedly wrongful termination on the basis of her race.

In late 2015, Complainant filed an unrelated pro se civil rights complaint against a private law firm and several individual defendants, claiming she was wrongfully terminated from the law firm due to age and race discrimination. She filed the complaint in the same division of the District Court that previously employed her. Subject Judge I initially was assigned to the matter. Shortly thereafter, based upon Complainant's prior employment in the District Court Clerk's Office, Subject Judge III *sua sponte* ordered that the case be reassigned to a different division. The matter was transferred and was assigned to Subject Judges II and III.

The individual defendants in that matter filed a motion to dismiss the complaint and a motion for sanctions against Complainant pursuant to Rule 11 of the Federal Rules of Civil Procedure. Subject Judge III issued a detailed memorandum opinion granting the motion to dismiss in part and denying it in part, and denying the motion for sanctions. After Subject Judge III's order, one claim against one individual defendant remained in the case. That claim remains pending, along with the claims against the law firm.

In this complaint of judicial misconduct, Complainant describes in detail her administrative proceeding against the District Court Clerk's Office and includes substantial documentary evidence concerning that proceeding. As an initial matter, it must be noted that Clerk's Office employees are not covered by the Judicial Conduct and

Disability Act. Any alleged misconduct on the part of Clerk's Office employees is beyond the scope of this proceeding and will not be addressed. *See* 28 U.S.C. §§ 351, 352(b)(1)(A)(i); Rule 4, *Rules for Judicial-Conduct and Judicial-Disability Proceedings*. Complainant does not allege that any of the Subject Judges of this complaint were involved in any respect in Complainant's confidential employment dispute proceeding with the District Court Clerk's Office.

According to Complainant, her contentious employment history with the District Court Clerk's Office calls into question the impartiality of all judges in the District Court in which she filed her unrelated civil rights complaint, including Subject Judges I, II, and III.¹ Complainant claims, "[t]he persons responsible for my termination are the administrative officers of the District Court offices for all [divisions]. They have a longstanding and close relationship with the judges they serve, who currently preside over my current case."

Specifically, Complainant disagrees with the progress of her civil rights case, and disputes a number of the decisions and rulings rendered in the course of that case. Complainant alleges, for instance, that "my adversary has been allowed to violate F.R.C.P., specifically Rule 11 with impunity," that the defendants "obtain sealing orders in violation of the Local Rules" and "engage in ex parte communications with the Court,"

¹ As plaintiff, Complainant chose to file her civil rights complaint in the District Court in which she had been previously employed and against which she had pursued administrative remedies for her allegedly wrongful termination. Courts generally afford plaintiffs a great deal of deference in selecting the forum for filing their complaints. *See Piper Aircraft Co. v. Reyno*, 454 U.S. 235, 241 (1981) ("[A] plaintiff's choice of forum should rarely be disturbed.").

and that they “are allowed to cherry pick evidence and distort facts.” Complainant further contends that “the proper recusals were not affected,” inasmuch as Subject Judge I, who was briefly assigned to the matter before Subject Judge III transferred it to a different division², allegedly was a law school classmate of defense counsel. Complainant concludes, “[t]he District Court has already demonstrated its inability to be impartial to me as their employee. What chance of impartiality do I have as a Plaintiff in the same jurisdiction?”

A review of the docket in Complainant’s civil rights case reveals that, although she has been an active and engaged pro se plaintiff, she has never filed any formal motions seeking the relief she describes in her complaint of misconduct, such as a motion for sanctions against defense counsel, a motion for any judge’s recusal, or a motion for a change of venue. Allegations that concern decisions about sanctions, recusals, changes of venue and similar case management matters must be presented to the presiding judge in the first instance. Moreover, any substantive decision rendered on such a motion is clearly merits-related. See Rule 3(h)(3)(A), *Rules for Judicial-Conduct and Judicial-Disability Proceedings* (“[a]n allegation that calls into question the correctness of a judge’s ruling, including a failure to recuse, without more, is merits-related”). 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

² The District Court docket does not reflect that Subject Judge I substantively participated in Complainant’s case prior to the transfer; there are, for instance, no orders issued by Subject Judge I.

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 in this regard are subject to dismissal.

Complainant's remaining allegations are patently frivolous and do not give rise to a reasonable inference that misconduct has occurred. First, even accepting Complainant's allegation that Subject Judge I may have been a law school classmate of defense counsel nearly thirty years ago, such a tenuous connection does not, without more, reasonably call into question Subject Judge I's impartiality. *See, e.g.*, Canon 3(C), Code of Conduct for United States Judges (concerning disqualification).³ In any event, as previously observed, Complainant's case was transferred to another division – and, consequently, to another judge – before Subject Judge I substantively participated in the case. Next, Complainant provides no explanation of or elaboration upon her vague and conclusory reference to alleged “ex parte communications with the Court.” Nothing in the more than 200 pages of material she submitted in support of the complaint sheds any light on this claim. Finally, Complainant does not describe any conduct whatsoever on the part of Subject Judges II or

³ The Code of Conduct for United States Judges is designed to provide guidance to judges, but is not a set of disciplinary rules. “Ultimately, the responsibility for determining what constitutes misconduct under the statute is the province of the judicial council of the circuit subject to such review and limitations as are ordained by the statute and by these Rules.” Commentary on Rule 3, *Rules for Judicial-Conduct and Judicial-Disability Proceedings*.

III that is alleged to constitute judicial misconduct. Accordingly, all of Complainant's remaining allegations will be dismissed. 28 U.S.C. § 352(b)(1)(A)(iii); Rule 11(c)(1)(C), (D), *Rules for Judicial-Conduct and Judicial-Disability Proceedings*.

Based on the foregoing, this complaint will be dismissed pursuant to 28 U.S.C. §§ 352(b)(1)(A)(i), (ii), and (iii).

s/ D. Brooks Smith
Chief Judge

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ORDER

(Filed: April 27, 2017)

PRESENT: SMITH, *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 Circuit Executive within **42 days** after the date of the chief judge's order.

18(b) Form. The petition should be in letter form, addressed to the Circuit Executive, 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 Office of the Circuit Executive and on the Court of

Appeals’ internet site, www.ca3.uscourts.gov.

s/ D. Brooks Smith

Chief Judge

Dated: April 27, 2017