

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. Nos. 03-17-90094 and 03-17-90095

IN RE: COMPLAINTS OF JUDICIAL MISCONDUCT
OR DISABILITY

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

MEMORANDUM OPINION

(Filed: February 9, 2018)

PRESENT: SMITH, *Chief Judge*.

This complaint was filed under the Judicial Conduct and Disability Act, 28 U.S.C. §§ 351-64, against a United States District Judge and a United States Magistrate Judge (“Subject Judge I” and “Subject Judge II”). 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 plaintiff in a civil action pending before Subject Judge I and Subject Judge II. Counsel was appointed in the underlying action and a settlement was achieved on behalf of Complainant and her then minor child. Complainant now seeks to rescind the consent judgment that was entered in the civil matter. Complainant filed an appeal to the Third Circuit Court of Appeals, but her appeal was recently dismissed for lack of jurisdiction, as the matter is still pending in the District Court.

In the present complaint of judicial misconduct, Complainant alleges that the Subject Judges ordered clerk's office and/or other judicial employees not to serve her with certain documents and colluded to hide "their noncompliance of service." Complainant also appears to contend that she has always represented herself pro se in the litigation, even though counsel was appointed.

There is no evidence that the Subject Judges acted improperly in any way. Assuming *arguendo* that Complainant is correct that she was not served with certain documents or orders, a review of the docket indicates that the reason Complainant may not have received them is because counsel was appointed and, therefore, documents filed electronically may have been sent only to counsel of record via CM-ECF. Moreover, most of the docket entries that she references in her complaint are not events with separate orders that are served upon the parties; e.g., the notification from the Court of Appeals to the District Court about the case number assigned to the appeal. In any event, there is no evidence of judicial misconduct. Accordingly, Complainant's 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*.

To the extent Complainant disagrees with docketing actions or other putative actions taken by clerk's office employees, Complainant's allegations are likewise subject to dismissal because non-judges are not covered by the Judicial Conduct and Disability Act. *See* 28 U.S.C. §§ 351, 352(b)(1)(A)(i); Rule 4, *Rules for Judicial-Conduct and Judicial-Disability Proceedings*. Furthermore, Complainant provides no evidence that the Subject Judges have colluded with Clerk's Office employees in some improper way. Her allegations are based on mere speculation and an unsupported contention that a clerk's office computer was hacked while she was using it.

To the extent Complainant seeks to collaterally attack the consent judgment or any of the Subject Judges' decisions or orders, Complainant's allegations are subject to dismissal as merits-related. "An allegation that calls into question the correctness of a judge's ruling, . . . , without more, is merits-related." Rule 3(h)(3)(A), *Rules for Judicial-Conduct and Judicial-Disability Proceedings*. 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); Rules 3(h)(3)(A), 11(c)(1)(B), *Rules for Judicial-Conduct and Judicial-Disability Proceedings*. 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). Accordingly, Complainant's merits-related allegations are subject to dismissal.

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

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. Nos. 03-17-90094 and 03-17-90095

IN RE: COMPLAINTS OF JUDICIAL MISCONDUCT
OR DISABILITY

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

ORDER

(Filed: February 9, 2018)

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: February 9, 2018