

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. Nos. 03-18-90089, 03-18-90090, 03-18-90091, 03-18-90092,
03-18-90093, 03-18-90094, 03-18-90095, 03-18-90096

IN RE: COMPLAINT OF JUDICIAL MISCONDUCT
OR DISABILITY

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

MEMORANDUM OPINION

(Filed: August 9, 2018)

PRESENT: SMITH, *Chief Judge*.¹

This is a complaint filed under the Judicial Conduct and Disability Act, 28 U.S.C. §§ 351-64, against three United States Circuit Judges (“Subject Judge I” through “Subject Judge III”) and five United States District Judges (“Subject Judge IV” through “Subject Judge VIII”). 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

¹ The Judicial Council voted to permit the undersigned to dispose of this complaint on the merits in the interest of sound judicial administration pursuant to Rule 25(f) of the *Rules for Judicial-Conduct and Judicial-Disability Proceedings*.

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's son and daughter-in-law were defendants in a tax proceeding in a District Court outside of this Circuit. After the government obtained a judgment against the son and daughter-in-law, the government filed a companion action in a District Court within this Circuit, seeking a judicial sale of the property at which Complainant lived in order to fulfill the tax liens. Complainant was not a party to the proceeding.² The property ultimately was sold and all proceeds were distributed to the government to satisfy the tax lien. Recently, the Court of Appeals remanded the matter to the District Court to determine, *inter alia*, whether Complainant should have been granted any of the proceeds of the property sale. The District Court concluded that Complainant was not entitled to any of the sale proceeds.

In 2017, Complainant filed a related complaint of judicial misconduct naming six federal judges (four Circuit Judges, one District Judge, and one Magistrate Judge) who oversaw aspects of the dispute involving the judicial sale of Complainant's home.³ *See* J.C. Nos. 03-17-90011 through 03-17-90016. The complaint was dismissed as non-cognizable, unsupported, and frivolous pursuant to 28 U.S.C. § 352(b)(1)(A)(i), (ii), and

² Complainant repeatedly describes the proceedings as "*ex parte*," apparently because she was not a party and was not afforded a hearing. Complainant does not identify any actual instances of *ex parte* communications involving any of the Subject Judges.

³ None of the previously-named judges are Subject Judges of the current complaint.

(iii). Complainant petitioned for review of that decision. Subject Judges II through VIII affirmed the dismissal.

In the current complaint of judicial misconduct, Complainant details her disagreement with the judicial sale of her home, as well as her disagreement with the dismissal of the claims set forth in her 2017 misconduct complaint.⁴ With regard to the Subject Judges, Complainant argues that, by dismissing the 2017 misconduct complaint and petition for review, the Subject Judges are guilty of “criminal malfeasance” as “co-conspirators, princip[al]s, and accessories after the fact to administratively conceal government fraud to aid, abet, provide comfort, and conceal government extortion, racketeering, and money laundering. . . .”

First, Complainant demands that this complaint be referred to another Circuit pursuant to Rule 26, *Rules for Judicial-Conduct and Judicial-Disability Proceedings*. Indeed, it appears that Complainant has named the Subject Judges in an express effort to

⁴ Many of Complainant’s allegations concern federal judges who are not named as Subject Judges of this complaint. To the extent such allegations concern federal judges that hold office within this Circuit, the allegations have been considered and do not provide “reasonable grounds for inquiry” into the existence of judicial misconduct. Accordingly, no complaints will be identified. *See* Rule 5, *Rules for Judicial-Conduct and Judicial-Disability Proceedings*. In contrast, allegations concerning federal judges that do not hold office in this Circuit will not be considered because complaints must be filed in the jurisdiction in which the judge holds office. *See* Rule 7(a)(1), *Rules for Judicial-Conduct and Judicial-Disability Proceedings*. Moreover, it is noted that Complainant provided copies of complaints of misconduct that she filed against those out-of-circuit judges in the appropriate jurisdiction. Finally, Complainant raises allegations of misconduct by individuals such as attorneys and IRS agents, who are not federal judges and are therefore not subject to 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*. Allegations against such non-covered individuals are beyond the scope of this proceeding and will not be addressed.

disqualify them from addressing this complaint and secure a transfer to another Circuit. She states, “[the Subject Judges] are required to recuse themselves as a matter of law because I am filing verified criminal misconduct complaints against them personally. . . . A transfer from this circuit is required. . . .” Such efforts at forum shopping should not be rewarded. For that reason, the *Rules for Judicial-Conduct and Judicial-Disability Proceedings* permit the Judicial Council to vote, as it has done here, to decline to transfer the matter and instead permit the chief judge to dispose of the complaint on the merits in the interest of sound judicial administration. See Rule 25(f) and (g), *Rules for Judicial-Conduct and Judicial-Disability Proceedings*. Complainant’s request for a transfer pursuant to Rule 26 is therefore denied.

Next, it is clear that Complainant is attempting to collaterally challenge numerous judicial decisions and rulings, including the judicial sale of her home. Such allegations are merits-related. Rule 3(h)(3)(A), *Rules for Judicial-Conduct and Judicial-Disability Proceedings*. This applies equally to Complainant’s allegations attacking rulings rendered in the course of her prior judicial misconduct proceeding. See Commentary to Rule 3, *Rules for Judicial-Conduct and Judicial-Disability Proceedings* (“[A] complaint challenging the correctness of a chief judge’s determination to dismiss a prior misconduct complaint would be properly dismissed as merits-related . . . even though it does not concern the judge’s rulings in Article III litigation.”). A disagreement with the merits of a judicial ruling does not give rise to cognizable misconduct. 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. Accordingly, all of Complainant's merits-related allegations will be dismissed.

Finally, Complainant's claims that the Subject Judges are involved in a conspiracy against her are entirely unsubstantiated. A review of the record reveals no support whatsoever for any claim of judicial misconduct against the Subject Judges. Accordingly, all remaining allegations are subject to dismissal as frivolous and unsupported by 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*.

Based on the foregoing, this complaint will be dismissed pursuant to 28 U.S.C. § 352(b)(1)(A)(i), (ii), and (iii). As previously noted, this is Complainant's second complaint to be dismissed on these grounds. Complainant's attention is therefore directed to Rule 10(a), *Rules for Judicial-Conduct and Judicial-Disability Proceedings*.⁵ Future abuse of the judicial misconduct complaint procedure may result in the imposition of restrictions under this provision.

⁵ Rule 10(a) of the *Rules of Judicial-Conduct and Judicial-Disability Proceedings* provides:

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, the 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/ D. Brooks Smith

Chief Judge

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ORDER

(Filed: August 9, 2018)

PRESENT: SMITH, *Chief Judge*.¹

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.

¹ The Judicial Council voted to permit the undersigned to dispose of this complaint on the merits in the interest of sound judicial administration, pursuant to Rule 25(f) of the *Rules for Judicial-Conduct and Judicial-Disability Proceedings*.

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: August 9, 2018