

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. Nos. 03-18-90194, 03-18-90195, 03-18-90196,
03-18-90197, 03-18-90198, 03-18-90199

IN RE: COMPLAINT OF JUDICIAL MISCONDUCT
OR DISABILITY

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

MEMORANDUM OPINION

(Filed: October 24, 2018)

PRESENT: SMITH, *Chief Judge*.

This complaint is filed under the Judicial Conduct and Disability Act, 28 U.S.C. §§ 351-64, against three United States District Judges (“Subject Judge I,” “Subject Judge II,” and “Subject Judge III”) and three United States Circuit Judges (“Subject Judge IV,” “Subject Judge V,” and “Subject Judge VI”).¹ 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,

¹ Complainant presents a number of allegations concerning state court judges, private attorneys, and expert witnesses. Such individuals are not federal judges and therefore are 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 non-covered individuals are beyond the scope of this proceeding and will not be addressed.

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. Over the past five years, she has filed a number of substantially similar civil complaints concerning a state court default judgment entered against her in 2012. Several such complaints were assigned to Subject Judges I, II, and III. Subject Judge I consolidated the complaints before her and dismissed them. Complainant did not appeal the judgment.² Complainant appealed Subject Judge II's dismissal order, and a panel of the Court of Appeals comprised of Subject Judges IV, V, and VI affirmed the judgment. Complainant also appealed Subject Judge III's dismissal order, which includes language directing Complainant to show cause why she should not be enjoined from filing further repetitive law suits concerning the same subject matter. That appeal was dismissed for failure to prosecute. Complainant also moved for reconsideration by Subject Judge III; the reconsideration motion remains pending.

Complainant argues that, because Subject Judges I, II, and III ordered dismissals without holding a trial, they have "collect[ed] fees and then deliver no performance." She therefore accuses them of "[t]heft by court of filing fees." In addition, Complainant describes Subject Judge III's order to show cause as an effort to "place[] a muzzle without legal justification" and a "misuse [of] his office." In addition, Complainant alleges that Subject Judges I, II, and III sent "defamatory orders from the trial to the Appellate court to

² Complainant filed an interlocutory appeal, which was dismissed for lack of appellate jurisdiction.

solicit a favorable outcome and cover up criminal acts by judiciary.” Complainant further alleges that the affirmance by Subject Judges IV, V, and VI indicates that they “have serious aptitude and credibility issues” because they allegedly “ruled against justice.”

In addition, Complainant alleges that a colleague of Subject Judges II and III is married to a defendant in Complainant’s cases and that this colleague’s marriage is linked to the orders dismissing Complainant’s cases. In Complainant’s view, her complaints contained “damning evidence” and the Subject Judges’ dismissal orders “send [a] troubling message [that] I, a United States Citizen, should not file against their friend’s wife.” Complainant argues that Subject Judges II and III should have transferred her complaint rather than adjudicate it. In addition, Complainant accuses Subject Judge III of conspiring with state court judges “to cover-up RICO activities,” of taking bribes, and of dismissing Complainant’s case to interfere with settlement talks and to “avoid the state paying or damages to plaintiff.” Finally, Complainant concludes that Subject Judge III is suffering from “mental disability.”

Upon review, it is apparent that the primary purpose of this complaint is to express Complainant’s strong disagreement with the merits of decisions rendered by the six Subject Judges, in particular the orders by Subject Judges I, II, and III dismissing her complaints. Such allegations are merits-related. Rule 3(h)(3)(A), *Rules for Judicial-Conduct and Judicial-Disability Proceedings* (“An 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); Rules 3(h)(3)(A), 11(c)(1)(B), *Rules for Judicial-Conduct and Judicial-Disability Proceedings*.

Accordingly, all merits-related allegations will be dismissed.

When considered apart from the merits-related allegations, Complainant's allegations are unsubstantiated. As a factual matter, Complainant's disagreement with the decisions in her cases does not cause her payment of court filing fees to become a "theft." In addition, Complainant offers nothing more than a subjective belief that the Subject Judges are involved in a conspiracy or that they suffer from mental disabilities. These allegations are "facially incredible or so lacking in indicia of reliability that no further inquiry is warranted." *See* Commentary on Rule 11, *Rules for Judicial-Conduct and Judicial-Disability Proceedings*. Finally, there is no evidence whatsoever that any Subject Judge is motivated to rule against Complainant because a colleague's wife is named as a defendant in her cases. Without more, naming the spouse of a judge who is not participating in the case does not give rise a circumstance in which the Subject Judges' impartiality might reasonably be questioned. *See, e.g.*, Canon 3(C)(1)(d), Code of Conduct for United States Judges (requiring disqualification where "the judge or the judge's spouse, or a person related to either within the third degree of relationship" is a party to the proceeding).³

³The 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

In sum, upon review of the record, it is apparent that there is no evidentiary support for Complainant's allegations of judicial misconduct and disability. These allegations are therefore 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).

s/ D. Brooks Smith
Chief Judge

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ORDER

(Filed: October 24, 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: October 24, 2018