

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. Nos. 03-23-90125, 03-23-90126, 03-23-90137, 03-23-90138

IN RE: COMPLAINTS OF JUDICIAL MISCONDUCT
OR DISABILITY

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

MEMORANDUM OPINION

(Filed: January 17, 2024)

PRESENT: HARDIMAN, Circuit Judge.¹

These complaints are filed under the Judicial Conduct and Disability Act, 28 U.S.C. §§ 351-64, against two United States District Judges (“Subject Judge I” and “Subject Judge II”) and two United States Circuit Judges (“Subject Judge III” and “Subject Judge IV”).² For the reasons that follow, the complaints 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 Acting pursuant to Rule 25(f), Rules for Judicial-Conduct and Judicial-Disability Proceedings.

² Complainant also named in her judicial misconduct complaint court employees in the District Court Clerk’s Office and the Circuit Executive’s Office, but such employees are not federal judges and thus not subject to the Judicial Conduct and Disability Act. See 28 U.S.C. § 351(d); Rule 1(b), Rules for Judicial-Conduct and Judicial-Disability Proceedings. Accordingly, any such claims will not be addressed in the opinion. 28 U.S.C. §§ 351, 352(b)(1)(A)(i).

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 filed an employment discrimination lawsuit against her former employer in 2018. Subject Judge I granted summary judgment to the employer, and the Court of Appeals affirmed that judgment. In 2022, Complainant filed a separate action in District Court against that court's Clerk, and the matter was assigned to Subject Judge I. Subject Judge I dismissed that case pursuant to 28 U.S.C. § 1915(e)(2)(b)(i) and (ii), and denied post-judgment motions. Complainant did not appeal. While Complainant pursued these cases, she submitted four judicial misconduct complaints against Subject Judge I. Those complaints were dismissed as containing non-cognizable, frivolous, merits-related, and unsubstantiated allegations. See J.C. Nos. 03-20-90005, 03-22-90014, 03-22-90073, 03-23-90006. In her new complaint and supplement against Subject Judge I (J.C. No. 03-23-90125), Complainant echoes previous claims, especially those made in J.C. No. 03-23-90006, that Subject Judge I harbored bias and prejudice in her 2022 case. Once again, these claims are largely predicated on her disagreement with the judge's rulings in the cases and as such, they remain non-cognizable under the Act as merits-related allegations. See Rules 4(b)(1), 11(c)(1)(B), Rules for Judicial-Conduct and Judicial-Disability Proceedings; see also 28 U.S.C. § 352(b)(1)(A)(ii); In re Memorandum of Decision of Judicial Conference Committee on Judicial Conduct and Disability, 517 F.3d 558, 561 (U.S. Jud. Conf. 2008) ("The Act is intended to further 'the effective and expeditious

administration of the business of the courts.’ It would be entirely contrary to that purpose to use a misconduct proceeding to obtain redress for—or even criticism of—the merits of a decision with which a litigant or misconduct complainant disagrees.”). Further, to the extent that she continues to maintain that Subject Judge I was biased and prejudiced against her, she presents nothing to alter the Judicial Council’s previous conclusions that the record does not reflect impropriety by Subject Judge I in either matter. See, e.g., J.C. No. 03-23-90006. Complainant’s allegations are thus subject to dismissal as frivolous and not supported by sufficient evidence to raise an inference that misconduct occurred. See 28 U.S.C. § 352(b)(1)(A)(iii); Rule 11(c)(1)(C), (D), Rules for Judicial-Conduct and Judicial-Disability Proceedings.

In 2023, Complainant filed additional pro se litigation in the District Court in which she named Subject Judge I as a defendant. The matter was assigned to Subject Judge II. In the judicial misconduct complaint docketed at J.C. No. 03-23-90126, Complainant alleges that Subject Judge II is responsible for having her case “transferred” to the Court of Appeals after she filed a “Motion for a Peremptory Challenge of Judge” in the appeals court. She claims that she “did not file a petition for a writ of mandamus or for an appeal,” but an original proceeding was opened in the court of appeals when documents submitted by her were forwarded by the District Court to the Court of Appeals. However, the District Court docket shows that no such “transfer” occurred. Although a mandamus action has been opened in the Court of Appeals (and for which Complainant

moved and has been granted permission to proceed in forma pauperis), her litigation in the District Court matter remains pending and has not been “transferred.”

Complainant also claims that Subject Judge II was biased in Subject Judge I’s favor because they serve on the same court, and that he purposefully delayed her lawsuit. However, the mere fact that the two judges serve on the same district court does not itself imply bias. Moreover, the record shows no improper motive, nor does it even show an objective delay when she only filed her lawsuit approximately two months before submitting her judicial misconduct complaint. Complainant’s allegations against Subject Judge II are accordingly subject to dismissal as non-cognizable, frivolous, and unsupported by evidence sufficient to raise an inference that misconduct occurred. See Rules 4(b)(2) (cognizable misconduct does not include “an allegation about delay in rendering a decision or ruling, unless the allegation concerns an improper motive in delaying a particular decision or habitual delay in a significant number of unrelated cases”), 11(c)(1)(B) (non-cognizable merits-related claims are grounds for dismissal), and 11(c)(1)(C), (D) (frivolous and unsupported allegations are subject to dismissal), Rules for Judicial-Conduct and Judicial-Disability Proceedings; 28 U.S.C. § 352(b)(1)(A)(iii).

In misconduct complaints docketed at J.C. Nos. 03-23-90137 and 03-23-90138, Complainant alleges that Subject Judge III and Subject Judge IV “knowingly and intentionally participated in misrepresentation, mis-conduct, and fraud on the Court ... by transferring fraud cases . . . from the U.S. Court of Appeals to the U.S. Judicial Council.” It is unclear exactly what Complainant is alleging here, as she has initiated these judicial

misconduct complaints of her own accord. As explained above, there was no “transfer” of cases. These allegations are subject to dismissal because complainant has provided no evidence supporting an inference of misconduct, and the claims are frivolous. 28 U.S.C. § 352(b)(1)(A)(iii); Rule 11(c)(1)(C), (D), Rules for Judicial-Conduct and Judicial-Disability Proceedings.³

As noted above, Complainant has filed multiple judicial misconduct complaints that were dismissed because they contained non-cognizable, frivolous, merits-based, and unsupported allegations. See J.C. Nos. 03-20-90005, 03-22-90014, 03-22-90073, 03-23-90006. Complainant has been cautioned that the continued filing of repetitive, harassing, or frivolous complaints might result in the imposition of restrictions pursuant to Rule 10 of the Rules for Judicial-Conduct and Judicial-Disability Proceedings, see J.C. Nos. 03-22-90073, 03-23-90006, yet she has continued to file more complaints containing frivolous, unsubstantiated, and merits-related allegations. Accordingly, copies of this opinion and prior opinions dismissing her repetitive allegations will be transmitted to the Judicial Council for consideration of the issuance of an order to show cause why Complainant should not be restricted from filing further complaints pursuant to Rule 10(a).

³ Complainant makes additional unsworn allegations in various submissions. These allegations have been considered pursuant to Rule 5 of the Rules for Judicial-Conduct and Judicial-Disability Proceedings. I decline to identify a complaint based on these allegations because they are frivolous and merits-related.

For these reasons, the complaints will be dismissed pursuant to 28 U.S.C.
§ 352(b)(1)(A)(i), (ii), and (iii).

Thomas M. Hardiman
Circuit Judge

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IN RE: COMPLAINTS OF JUDICIAL MISCONDUCT
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ORDER

(Filed: January 17, 2024)

PRESENT: HARDIMAN, Circuit Judge.

On the basis of the foregoing opinion entered on this date, it is ORDERED AND ADJUDGED that the written complaints brought pursuant to 28 U.S.C. § 351 are 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.

Thomas M. Hardiman
Circuit Judge

Dated: January 17, 2024