

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. No. 03-23-90130

IN RE: COMPLAINT OF JUDICIAL MISCONDUCT
OR DISABILITY

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

MEMORANDUM OPINION

(Filed: January 31, 2024)

PRESENT: CHAGARES, Chief Judge.

This complaint is filed under the Judicial Conduct and Disability Act, 28 U.S.C. §§ 351-64, against a United States District Judge (“Subject Judge”). 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 has been a pro se plaintiff in a civil proceeding before the Subject Judge since 2013. It is not necessary to recount that lengthy history in detail; it suffices to say that, after an arbitration was conducted, the Subject Judge entered judgment and an

award of attorneys' fees in favor of the defendants. Complainant filed a state court action, to challenge the judgment. The Subject Judge ultimately entered an order precluding Complainant from filing further actions relating to the same subject matter without first obtaining permission. Most recently, the defendants moved to execute the judgment on Complainant's real property and the Subject Judge granted the motion. Complainant appealed, and the appeal remains pending.

In this complaint of judicial misconduct, Complainant claims that the Subject Judge has improperly interfered with her right to proceed in state court. She alleges that the Subject Judge committed a crime and "harassed and threatened" her by entering the preclusion order. She further alleges that the Subject Judge's order permitting execution on the judgment is improper because, in Complainant's view, she has a right to pursue state court remedies.

Complainant's allegations primarily attempt to collaterally challenge the Subject Judge's rulings, including the preclusion order and the order permitting execution on the judgment. These allegations are merits related and do not constitute cognizable misconduct. Rule 4(b)(1), Rules for Judicial-Conduct and Judicial-Disability Proceedings ("Cognizable misconduct does not include an allegation that calls into question the correctness of a judge's ruling, including a failure to recuse."). Complainant is currently pursuing an appeal of the execution order. This administrative proceeding does not provide an additional forum for obtaining review of the merits of that decision. "The misconduct procedure [under the Judicial Conduct and Disability 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). Complainant's merits-related allegations are thus subject to dismissal. See 28 U.S.C. § 352(b)(1)(A)(ii); Rules 4(b)(1), 11(c)(1)(B), Rules for Judicial-Conduct and Judicial-Disability Proceedings.

Complainant's allegations of criminal activity, threats, and harassment are baseless when considered apart from the merits-related allegations. The record in her civil case does not lend support to such claims. Complainant's 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)(ii) and (iii). Complainant previously filed four misconduct complaints, three of which named the same Subject Judge as the current complaint. See J.C. Nos.03-15-90061, 03-16-90013, 03-18-90051-53, 03-18-90168. All of those complaints were determined to be merits-related, unsubstantiated, and frivolous. In the opinion resolving J.C. No. 03-18-90168, Complainant was cautioned pursuant to Rule 10 of the Rules for Judicial-Conduct and Judicial-Disability Proceedings¹ that continued filing of repetitive,

¹ Rule 10(a) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings provides:

harassing, or frivolous complaints could result in the imposition of restrictions pursuant to this provision. Complainant is, once again, strongly cautioned under Rule 10 against further abuse of the complaint procedure.

s/ Michael A. Chagares
Chief Judge

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.

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ORDER

(Filed: January 31, 2024)

PRESENT: CHAGARES, 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)(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/ Michael A. Chagares
Chief Judge

Dated: January 31, 2024