

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. No. 03-23-90136

IN RE: COMPLAINT OF JUDICIAL MISCONDUCT
OR DISABILITY

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

MEMORANDUM OPINION

(Filed: April 19, 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 is an attorney who contends that the District Court initiated an improper disciplinary investigation of her in retaliation for filing prior complaints of

judicial misconduct against the Subject Judge. She further states that the Subject Judge is the only one who complains about her in the court-appointed investigator's report. In addition, she alleges that the Subject Judge engaged in misconduct because he provided a copy of a "confidential" judicial misconduct opinion to the investigator.¹

To the extent Complainant seeks to collaterally attack the referral of her conduct to counsel for investigation or any other decisions made by a judicial officer, Complainant's allegations are subject to dismissal as merits-related. Merits-related allegations are not cognizable under the Judicial Conduct and Disability Act. 28 U.S.C. § 352(b)(1)(A)(ii); 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"); Rule 11(c)(1)(B) Rules for Judicial-Conduct and Judicial-Disability Proceedings. See also Commentary on Rule 11 (the phrase "decision or procedural ruling" is not limited to rulings issued in deciding Article III cases or controversies).²

Complainant's allegation that the District Court's referral of her conduct for investigation was retaliatory in nature is likewise subject to dismissal. The District Court's Local Rules require judges to refer attorney misconduct or allegations of attorney misconduct to counsel for investigation when the allegations "if substantiated, would

¹ Attorney discipline proceedings against Complainant remain ongoing in the District Court. I express no opinion as to the question of whether Complainant should be disciplined.

² Complainant also complains about the actions of counsel who conducted the investigation. These allegations cannot be addressed in this proceeding because only federal judges are subject to the Judicial Conduct and Disability Act. Rule 1, Rules for Judicial-Conduct and Judicial-Disability Proceedings; 28 U.S.C. § 352(b)(1)(A)(i).

warrant discipline on the part of an attorney admitted to practice before this court shall come to the attention of a judge of this court” The underlying record in the attorney conduct investigation has been reviewed and it refutes Complainant’s allegations of retaliation conclusively. The record reflects that the order initiating proceedings regarding Complainant’s conduct was issued by the then-Chief District Judge and not the Subject Judge. The order further directed that court-appointed counsel advise the court regarding the proper procedures to be followed under the local rule. Subsequently, after receiving advice regarding the proper procedures, the current Chief District Judge issued an order appointing investigative counsel and directed counsel to file a recommendation in accordance with the local attorney discipline rule. Following an investigation, investigative counsel issued a report and recommendation recommending that Complainant be required to respond to the report, that a hearing be held, and that discipline of Complainant, including a possible suspension or disbarment, be considered.

The report and the record have been reviewed and Complainant is incorrect that the Subject Judge is the only judge in the district who has been critical of Complainant’s practice of law. The starting point of the incidents considered by investigative counsel was the issuance of an opinion by a different District Judge denying a fee petition in its entirety and referring Complainant’s conduct to the state disciplinary board.³ The report also cited to language critical of Complainant that was used in opinions by other judges over the years. Counsel, moreover, discussed Complainant’s putative statements that the

³ The state disciplinary board publicly reprimanded Complainant with respect to her conduct.

District Court judges were linked to the mafia, among other paranoid allegations.⁴ It is clear, therefore, that the attorney conduct investigation was the result of a longstanding pattern of alleged conduct and not retaliatory action on the part of the Subject Judge. Accordingly, Complainant's allegations of retaliation by the Subject Judge are subject to dismissal because "the allegations . . . are conclusively refuted by objective evidence . . ."

28 U.S.C. § 352(b)(1)(B); see also Commentary on Rule 11, Rules for Judicial-Conduct and Judicial-Disability Proceedings (a matter is not "reasonably" in dispute if a limited inquiry shows that the allegations do not constitute misconduct, that they lack any reliable factual foundation, or that they are conclusively refuted by objective evidence).

The investigator's subsequent discussion of Complainant's complaints of judicial misconduct against the Subject Judge in a supplement to this report and recommendation does not undermine this conclusion. Notably, the supplement was prepared at the request of the presiding District Court Judge when Complainant failed to respond to the initial report as ordered and the presider requested an update to the record.⁵ In the supplement, investigative counsel observed that Complainant had filed repeated frivolous complaints of judicial misconduct against the Subject Judge and that "[a]gainst the backdrop of all of

⁴ Investigative counsel also raised concerns about substance abuse and mental health based on Complainant's arrest and a transcript of testimony by Complainant's mother in a criminal matter. This arrest occurred after the District's initiation of the investigation of Complainant's conduct.

⁵ Instead of filing a response, Complainant filed a notice of appeal to the Third Circuit and the appeal was dismissed for lack of jurisdiction. The presiding District Court Judge is not the Subject Judge. Furthermore, the three-judge hearing panel that was later assigned to the matter likewise does not include the Subject Judge.

the other issues identified in the original Report and this Supplemental Report [including a conviction for disorderly conduct and public drunkenness charges], [Complainant's] repeated filing of frivolous, groundless judicial conduct complaints . . . further bolsters the case that she has violated professional standards” It is clear, therefore, from the record that the investigator's discussion of the dismissal of past frivolous complaints filed by Complainant against the Subject Judge is not evidence of retaliation. Rather, the discussion was intended to provide additional context for the investigator's initial recommendation that discipline be considered.

Moreover, the Subject Judge's testimony in the underlying attorney investigation proceeding, including Complainant's own cross examination of the Subject Judge, has been reviewed and it does not support Complainant's allegations of retaliation. It bears emphasizing that all of Complainant's past complaints against the Subject Judge were dismissed as frivolous and merits-related. See J.C. Nos. 03-20-90083, 03-21-90005, and 03-21-90071. Complainant was cautioned previously under Rule 10 against filing additional frivolous complaints. See J.C. No. 03-21-90071. Based on the foregoing, Complainant's remaining allegations of retaliation are dismissed as frivolous and unsupported by sufficient evidence to raise an inference of judicial misconduct. 28 U.S.C. § 352(b)(1)(A)(iii); Rule 11(c)(1)(C), (D), Rules for Judicial-Conduct and Judicial-Disability Proceedings.

Complainant also complains that the Subject Judge engaged in misconduct when he provided investigatory counsel a copy of the “confidential” opinion dismissing a prior

complaint filed against the Subject Judge (J.C. No. 03-21-90071). Complainant is mistaken that the opinion is confidential. Indeed, this opinion is currently posted on the Third Circuit website because “[w]hen final action has been taken on a complaint and it is no longer subject to review as of right, all orders entered by the chief judge and judicial council . . . must be made public. . . .” Rule 24, Rules for Judicial-Conduct and Judicial-Disability Proceedings. The Rules further provide that “[n]othing . . . precludes the subject judge from acknowledging that he or she is the judge referred to in documents made public under Rule 24.” Rule 23, Rules for Judicial-Conduct and Judicial-Disability Proceedings. Even assuming arguendo that the opinion was provided to investigatory counsel before it became public, the opinion was provided as part of a sealed, confidential proceeding to an officer of the court. This is not judicial misconduct. Accordingly, Complainant’s allegations about providing the opinion to investigative counsel are subject to dismissal as frivolous and unsupported by evidence that would raise an inference that misconduct has occurred. Id.; see also Rule 11(c)(1)(A), Rules for Judicial-Conduct and Judicial-Disability Proceedings (“A complaint may be dismissed in whole or in part to the extent that the chief judge concludes that the complaint: (A) alleges conduct that, even if true, is not prejudicial to the effective and expeditious administration of the business of the courts . . .”).

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. 03-20-90083, 03-21-90005, and 03-21-90071.

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, yet she proceeded with the present complaint seeking to collaterally attack an attorney conduct investigation in the District Court. Accordingly, copies of this opinion and prior opinions dismissing her 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).

Based on the foregoing, this complaint will be dismissed pursuant to 28 U.S.C. § 352(b)(1)(A)(i), (ii), (iii) and 28 U.S.C. § 352(b)(1)(B).

s/ Michael A. Chagares
Chief Judge

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ORDER

(Filed: April 19, 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)(i), (ii), (iii) and 28 U.S.C. § 352(b)(1)(B).

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: April 19, 2024