

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. Nos. 03-16-90084; 03-16-90085; 03-16-90086

IN RE: COMPLAINT OF JUDICIAL MISCONDUCT
OR DISABILITY

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

MEMORANDUM OPINION

(Filed: April 25, 2017)

PRESENT: SMITH, *Chief Judge*.

This is a complaint 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”). 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 involved in an extremely contentious series of disputes with her condominium association and others for many years, which has spawned litigation in

both state and federal court. In 2014, she filed a pro se civil rights complaint against numerous state officials concerning their involvement in one of Complainant's state court housing disputes. That matter was assigned to Subject Judge II. Complainant moved for Subject Judge II's recusal on grounds that Subject Judge II suffered from conflicts of interest and demonstrated a lack of impartiality. Subject Judge II granted the motion and the matter was reassigned to Subject Judge I. After permitting Complainant three opportunities to file a complaint in compliance with the Federal Rules of Civil Procedure, Subject Judge I dismissed the complaint with prejudice. Complainant appealed, and the appeal remains pending.

In 2015, Complainant filed a notice of removal of a state court proceeding concerning her housing dispute. That case was assigned to Subject Judge II. The defendant moved to remand the matter to state court and Subject Judge II granted the motion, concluding there was a lack of subject matter jurisdiction. Complainant moved for reconsideration and for Subject Judge II's recusal. Subject Judge II denied the motions and that matter is closed.

Finally, in late 2015, Complainant filed a pro se civil RICO complaint naming more than thirty-five defendants, once again relating to her housing dispute. That matter was assigned to Subject Judge I. The defendants filed motions to dismiss and for sanctions against Complainant, while Complainant moved for summary judgment and for Subject Judge I's recusal. Subject Judge I declined to recuse or to impose sanctions, denied the dismissal motions without prejudice, and directed Complainant to file an

amended complaint. Complainant did so.¹ Fifteen groups of defendants then filed motions to dismiss. Subject Judge I granted the motions and dismissed the amended complaint with prejudice. Complainant has filed a substantial number of post-judgment motions, which remain pending.

In this complaint of judicial misconduct, Complainant alleges that the three Subject Judges violated the Code of Conduct for United States Judges in numerous respects.² First, although Complainant expressly states that “none of what I am seeking is directly related to the merits of a decision or procedural ruling,” she presents a number of allegations that challenge the merits of decisions and rulings rendered by Subject Judges I and II in the course of her three federal cases. Complainant alleges, for example, that Subject Judges I and II declined to certify Complainant’s timely filed challenges to state statutes. In addition, Complaint alleges that Subject Judge II failed to *sua sponte* recuse himself from the 2014 civil rights action, contending that he “was fully aware of a conflict” when he began presiding over it, “but did not reveal it” and “only recused himself after a motion was filed by me in July 2015.” Complainant also contends that

¹ After the amended complaint was filed, Subject Judge I entered an order clarifying the date on which answers to the amended complaint would be due. Complainant appealed that order. That appeal was dismissed for lack of appellate jurisdiction.

² The 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 Rules.” Commentary on Rule 3, *Rules for Judicial-Conduct and Judicial-Disability Proceedings*.

Subject Judge II improperly failed to recuse himself from the 2015 matter that was removed from state court.

These allegations are merits-related. “An allegation that calls into question the correctness of a judge’s ruling, including a failure to recuse, without more, is merits-related.” Rule 3(h)(3)(A), *Rules for Judicial-Conduct and Judicial-Disability Proceedings*. 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, these allegations are subject to dismissal.

Complainant also presents claims of undue delay. She alleges that Subject Judge I caused inordinate delay in the 2014 civil rights proceeding by permitting motions to remain pending for as long as seven months. In addition, she alleges that she sent “numerous letters” to Subject Judge III, who “took no action to address the inexplicable delays in my cases being caused by [Subject Judge I] and [Subject Judge II].”

Generally, delay is not cognizable as judicial misconduct because it effectively poses a challenge to merits of official actions by the judge – *i.e.*, the decision to assign a lower priority to a particular case. *See* 28 U.S.C. § 352(b)(1)(A)(ii); Rule 11(c)(1)(B), *Rules for Judicial-Conduct and Judicial-Disability Proceedings*; Rule 3 Commentary, *Rules for Judicial-Conduct and Judicial-Disability Proceedings*. A claim of delay in a single case may qualify as cognizable judicial misconduct only if “the allegation concerns

an improper motive in delaying a particular decision” Rule 3(h)(3)(B), *Rules for Judicial-Conduct and Judicial-Disability Proceedings*.

As a factual matter, the record reveals no periods of undue delay in Complainant’s three proceedings. Contrary to Complainant’s arguments, a period of several months in resolving a complex motion is neither unusual nor excessive. Moreover, the record reveals that Complainant herself has contributed to a slowing of the pace of her litigation by filing numerous motions and other submissions that take substantial time to resolve. For instance, Complainant specifically alleges that Subject Judge I “delayed adjudicating a motion to vacate for approximately six months.” Yet, the record demonstrates that, during the time that the motion to vacate was pending before Subject Judge I, Complainant proceeded to file at least three separate motions seeking emergency relief, a motion for an extension of time to appeal, and a “motion for consolidation and supplemental jurisdiction,” as well as various letters to the court. Subject Judge I’s order resolving the motion to vacate also addressed at least seven other pending motions, and it is simply no surprise that disposing of so many issues required considerable time.

Even if the record supported a claim of delay (which it does not), Complainant has provided nothing whatsoever to substantiate a claim that any perceived delay is the result of improper motive on the part of any Subject Judge. Accordingly, to the extent they are not merits-related, Complainant’s allegations of delay are subject to dismissal as unsupported by evidence that would raise an inference that misconduct has occurred. *See*

28 U.S.C. § 352(b)(1)(A)(iii); Rule 11(c)(1)(D), *Rules for Judicial-Conduct and Judicial-Disability Proceedings*.

Next, Complainant surmises that Subject Judges I, II, and III must have “directed documents not to be filed in my cases. Documents which are stamped have not been filed by the Clerk,” including documents that Complainant attempted to file in her 2014 civil rights proceeding. Complainant contends that Subject Judge I “has not addressed the missing documents,” although allegedly “known to [him] for months.” Similarly, Subject Judge II allegedly “ruled on an incomplete record” in the 2015 matter that was removed from state court; Complainant alleges that documents in that matter “have not been filed by the Clerk.”³

Complainant offers no evidence to support her suspicion that the Subject Judges have directed employees of the Clerk’s Office not to docket some of her submissions. Indeed, the record in all three of Complainant’s civil matters reflect that Complainant has filed copious documents that have been appropriately docketed. Even if a document has been overlooked, there is simply no basis for concluding that an omission from the docket is the result of judicial misconduct. Accordingly, these allegations will be dismissed as frivolous and unsupported by evidence that would raise an inference that misconduct has

³ A district judge generally does not play a direct role in the docketing process, and there is no indication that any of the Subject Judges did so here. Docket entries are created by clerk’s office staff members, who are not covered by 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*.

occurred. 28 U.S.C. § 352(b)(1)(A)(iii); Rule 11(c)(1)(C), (D), *Rules for Judicial-Conduct and Judicial-Disability Proceedings*.

Complainant further alleges that Subject Judge I engaged in improper *ex parte* communications with the defendants and defense counsel. She states, “[t]hese communications were not revealed, but became known when revisions to orders were subsequently filed and signed by him.” Complainant does not, however, specify the orders or the cases in which these *ex parte* communications with Subject Judge I allegedly appear, and a review of the record does not substantiate this claim. Complainant also alleges that Subject Judge II also engaged in improper *ex parte* communications in the course of the 2015 matter that was removed from state court. She states that Subject Judge II contacted defense counsel by telephone prior to a hearing, and “[t]he conversation was not put on the record. I was not party to the call. However, I was present in court while the conversation was being had.” Yet the docket reflects that defense counsel participated in the hearing telephonically. Judges are permitted to engage in *ex parte* communications for scheduling and administrative purposes, such as arranging participation in a hearing by telephone. *See* Canon 3(A)(4)(b), Code of Conduct for United States Judges. Because Complainant offers no evidence that would raise an inference that misconduct has occurred, these allegations will be dismissed. 28 U.S.C. § 352(b)(1)(A)(iii); Rule 11(c)(1)(D), *Rules for Judicial-Conduct and Judicial-Disability Proceedings*.

Finally, Complainant alleges that Subject Judge I “failed to report violations of the [rules of professional conduct]” on the part of defense counsel in both the 2014 civil rights matter and the 2015 RICO matter. Complainant contends that the alleged violations were “[k]nown to him by documentation, judicial notice and through filings with supporting evidence.” Specifically, Complainant cites her motion for summary judgment filed in that matter, which Subject Judge I denied as premature. Complainant further alleges that defense counsel in the RICO matter violated the rules of professional conduct by seeking relief “without filing a motion” and be attempting to “alter local rules.” Similarly, Complaint alleges that Subject Judge II “failed to report violations of counsel” when defense counsel allegedly did not comply with applicable rules of procedure concerning service.

Complainant’s allegations merely reflect her disagreement with defense counsel’s litigation strategies and the merits of its motions, and do not reasonably give rise to an inference that judicial misconduct has occurred. Complainant’s allegations notwithstanding, the record does not demonstrate that the Subject Judge possessed “reliable evidence indicating the likelihood that . . . a lawyer violated applicable rules of professional conduct.” *See* Canon 3(B)(5), Code of Conduct for United States Judges. Complainant offers nothing to establish that Subject Judges I or II had any obligation to report the conduct she describes. Accordingly, these 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, the 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: April 25, 2017)

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: April 25, 2017