

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. Nos. 03-17-90011, 03-17-90012, 03-17-90013,
03-17-90014, 03-17-90015, 03-17-90016

IN RE: COMPLAINT OF JUDICIAL MISCONDUCT
OR DISABILITY

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

MEMORANDUM OPINION

(Filed: May 22, 2017)

PRESENT: SMITH, *Chief Judge*.

This is a complaint filed under the Judicial Conduct and Disability Act, 28 U.S.C. §§ 351-64, against six federal judges: four United States Circuit Judges (“Subject Judge I” through “Subject Judge IV”), a United States District Judge (“Subject Judge V”), and a United States Magistrate Judge (“Subject Judge VI”). 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 describes herself as an elderly, handicapped widow. Her son and daughter-in-law were involved in a tax dispute in a District Court outside of this Circuit. Complainant was not named in that suit, although she apparently attempted, unsuccessfully, to intervene.¹ After the government obtained a judgment against the son and daughter-in-law, it filed a companion action in a District Court within this Circuit, seeking a judicial sale of real property to fulfill tax liens. Complainant was not named in that suit and the record does not reflect that she participated in it in any respect.

The matter was assigned to Subject Judge V and was referred to Subject Judge VI. Subject Judge VI issued a report and recommendation recommending that summary judgment be granted in favor of the government. Subject Judge V adopted the recommendation, and entered summary judgment and an order of sale. The defendants appealed and also filed post-judgment motions, which Subject Judge V denied. The defendants filed a second appeal from the denial of the post-judgment motions, which has been consolidated with the first appeal.

The defendants moved in the Court of Appeals for a stay of the sale and for an injunction pending appeal. Subject Judges I and II denied the motion. Although the Clerk of the Court of Appeals briefly stayed the matter, Subject Judge III lifted the stay and

¹ Complainant raises numerous allegations concerning the proceeding in the out-of-circuit District Court and subsequent appeal before a Court of Appeals. Allegations concerning out-of-circuit judges are not properly filed in this circuit and will not be considered in this opinion. *See* Rule 7(a)(1), *Rules for Judicial-Conduct and Judicial-Disability Proceedings* (“[A] complaint . . . must be filed with the circuit clerk in the jurisdiction in which the subject judge holds office.”); *see also* 28 U.S.C. §§ 351(a), 352(b)(1)(A)(i). In any event, it appears Complainant is pursuing complaints against those federal judges in the appropriate jurisdiction.

ordered briefing to proceed. When the defendants sought reconsideration, Subject Judge IV denied that motion. The real property at issue has since been sold, and the consolidated appeal is fully briefed and remains pending. There is nothing in the record indicating that Complainant is participating in the appeal.

Although Complainant was not a party before the District Court or the Court of Appeals, she alleges in her complaint of misconduct that she owned an interest in, and was residing in, the real property that was sold pursuant to the judicial sale. She presents sweeping allegations against “all the judges in the above actions” to the effect that the Subject Judges conspired to “maliciously unlawfully seize and evict an 83 year old handicapped widow from her property without any due process whatsoever.”

Specifically, Complainant claims she is a victim of “government racketeering” and has been “depriv[ed] of due process and just compensation” in violation of the constitution, because the judicial sale was effected despite her “equitable and possessory interest” in the real property at issue. Complainant alleges that Subject Judges I and II conspired with Subject Judge V in denying her motion for a stay of the judicial sale. In addition, she alleges that “a conspiracy is further evidenced by . . . [the Subject Judges and others] all refusing to address and reverse the plain errors and violations of controlling laws and the constitution.” In support of these allegations, Complainant provides various documents, including a promissory note apparently reflecting her 1/3 interest in a real estate investment trust, as well as an affidavit filed in District Court in which Complainant attests to her 1/3 interest in the real estate investment trust. Complainant further alleges

that the Subject Judges' inability to "read and comprehend the unambiguous words in my affidavit" indicates that they all suffer a "mental disability."

It is readily apparent that the vast majority of Complainant's allegations are merits-related, inasmuch as they challenge the validity of the judicial sale of the property in which she had been residing as well as all of the judicial decisions and rulings resolving motions relating to the judicial sale. "An allegation that calls into question the correctness of a judge's ruling, . . . 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*.

This administrative proceeding does not provide an opportunity for Complainant to litigate substantive challenges to the merits of judicial decisions and rulings issued in proceedings in which she did not participate. The "misconduct procedure [under the 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). Accordingly, Complainant's merits-related allegations will be dismissed.

When considered apart from the merits-related allegations, Complainant's claims of judicial misconduct and disability are entirely unsubstantiated. The record provides no

evidentiary support for Complainant's allegations of racketeering, conspiracy, an inability to read and comprehend documents, or any of Complainant's myriad other allegations.

Accordingly, all remaining 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, 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: May 22, 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: May 22, 2017