

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. No. 03-17-90020

IN RE: COMPLAINT OF JUDICIAL MISCONDUCT
OR DISABILITY

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

MEMORANDUM OPINION

(Filed: June 8, 2017)

PRESENT: SMITH, *Chief Judge*.

This is a complaint filed under the Judicial Conduct and Disability Act, 28 U.S.C. §§ 351-64, against a United States District Judge (the “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).

In 2008, Complainant, through counsel, filed a complaint against her former employer in which she alleged discrimination and retaliatory discharge. The matter was

assigned to a District Judge who is not a Subject Judge of this complaint. In early 2010, the presiding District Judge entered summary judgment in favor of the employer, and that judgment was affirmed on appeal.

More than three years after the case was closed, Complainant filed a pro se request to reopen the case in order to present newly discovered evidence. The post-judgment motion was assigned to the Subject Judge, who denied it as untimely and meritless. Complainant moved for reconsideration, which the Subject Judge also denied. Complainant then appealed, and the Court of Appeals affirmed the Subject Judge's rulings. Three years later, Complainant filed a similar motion, this time styled as a motion for relief from judgment. The Subject Judge denied the motion as an improper attempt to re-litigate the same issues that had previously been decided, and cautioned Complainant that further attempts to reopen the case on the same grounds could result in sanctions. Complainant did not appeal.¹

In this complaint of judicial misconduct, Complainant claims that the Subject Judge exhibited bias against her and pre-judged the issues in her case. Complainant alleges that she should have been granted a trial, “[a]s all my claims can be verified by a trial,” and that the decision not to order a trial “shows [the Subject Judge’s] contempt for my

¹ Within her complaint of judicial misconduct, Complainant states, “I would like to appeal this decision. I have included a Notice of Appeal so that it would be on time if allowed to continue.” No action will be taken on this request, which was made within this confidential administrative proceeding and which is not an appropriate method for filing an appeal. Complainant is encouraged to consult Fed. R. App. P. 3 and 4 concerning the proper procedure and timing for filing a notice of appeal.

situation.” She argues that the Subject Judge should have granted her post-judgment motions because “[t]his is not about another bite of the judicial apple as [the Subject Judge] . . . claim[s].” Complainant further alleges that the Subject Judge should have granted her motions because she suffers from mental illness and “was excusably ignorant of what to do.” She contends that the Subject Judge’s “[o]bvious bias is grounds for reversal on appeal.”

It is readily apparent that Complainant’s allegations reflect her disagreement with the decisions and rulings rendered by the Subject Judge on her post-judgment motions. Such allegations are merits-related. “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*. 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.

Complainant's claims of bias and pre-judgment are premised on nothing more than her merits-related allegations. When considered independently, these allegations are wholly lacking evidentiary support. 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)(ii) and (iii).

s/ D. Brooks Smith
Chief Judge

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. No. 03-17-90020

IN RE: COMPLAINT OF JUDICIAL MISCONDUCT
OR DISABILITY

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

ORDER

(Filed: June 8, 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)(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: June 8, 2017