

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. Nos. 03-18-90009, 03-18-90010, 03-18-90011, 03-18-90012

IN RE: COMPLAINT OF JUDICIAL MISCONDUCT
OR DISABILITY

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

MEMORANDUM OPINION

(Filed: March 13, 2018)

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 (“Subject Judge I”) and three United States Magistrate Judges (“Subject Judge II,” “Subject Judge III,” and “Subject Judge IV”). 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, with her minor child, filed a counseled complaint against the United States, seeking to recover for medical injuries suffered by the minor child. Subject

Judge I signed an order acknowledging the parties' consent to proceed before a Magistrate Judge, and the matter was then assigned to Subject Judge II, who set the matter for a bench trial. About a month before the scheduled trial date, the parties were sent notice of a settlement conference to be held before Subject Judge IV. At the conference, the parties reached a substantial settlement. Subject Judge II then marked the matter closed.

Shortly thereafter, Complainant filed submissions indicating that she wished to terminate her attorneys and withdraw the settlement agreement, contending that the attorneys failed to properly advise her concerning a Medicaid lien that applied to the settlement. The Government responded with a motion to enforce the settlement agreement. Subject Judge II held a hearing and ultimately granted the motion to enforce the settlement agreement. Complainant sought reconsideration, which Subject Judge II denied. Complainant appealed, and the Court of Appeals affirmed the judgment. Complainant also filed numerous post-judgment motions. The matter was reassigned to Subject Judge III, who denied the post-judgment motions. Complainant appealed once again, and that appeal remains pending.

Complainant also filed a separate lawsuit against her former attorneys, claiming that they misled her into entering the disadvantageous settlement agreement. The matter was assigned to Subject Judge I, who dismissed the complaint for failure to state a claim upon which relief can be granted. Complainant sought reconsideration, which Subject Judge I also denied. On appeal, the Court of Appeals affirmed the judgment.

In this complaint of judicial misconduct, Complainant recounts many of the facts concerning her wish to withdraw from the settlement agreement, the breakdown of her relationship with her former attorneys, and the resultant legal proceedings.¹ Among other things, Complainant alleges that Subject Judge I engaged in misconduct by accepting the parties' designation to proceed before a magistrate judge, allegedly in violation of Complainant's due process rights. In addition, Complainant alleges that, by ordering enforcement of the settlement agreement, Subject Judge II demonstrated bias in favor of the Government and her former attorneys and engaged in "gross misconduct." She further alleges that Subject Judge II is guilty of bribery because Subject Judge II awarded an excessive amount of attorneys' fees to Complainant's former attorneys. Complainant contends that Subject Judge III engaged in misconduct in addressing her post-judgment motions, for instance, by issuing an order directing that Complainant's email correspondence to the court would not be considered and by appointing a guardian ad litem for Complainant's daughter "without justifiable cause or subject matter jurisdiction." Finally, Complainant alleges that Subject Judge IV engaged in misconduct in the course of the settlement conference by encouraging the allegedly wrongful settlement of Complainant's case.

¹ To the extent Complainant alleges wrongdoing on the part of private attorneys, such individuals are not subject to 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*. Allegations against non-covered individuals are beyond the scope of this proceeding and will not be addressed in this opinion

These allegations are clearly intended to challenge decisions and rulings rendered by the four Subject Judges in the course of Complainant's civil proceedings. As such, the 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*.

Indeed, Complainant presented many of these same claims to the Court of Appeals in the course of her appeals of the judgments rendered in the two civil proceedings, and the Court of Appeals affirmed those judgments. This administrative proceeding does not permit Complainant another opportunity to litigate those claims. 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 are subject to dismissal.

When considered apart from her merits-related allegations, Complainant's allegations of bribery, bias, and other misconduct all lack evidentiary support. A careful review of the record reveals no support for a claim of judicial misconduct on the part of

Subject Judges I through IV. Accordingly, any 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: March 13, 2018)

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: March 13, 2018