

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. No. 03-18-90200

IN RE: COMPLAINT OF JUDICIAL MISCONDUCT
OR DISABILITY

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

MEMORANDUM OPINION

(Filed: November 29, 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 (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 early 2017, Complainant filed a pro se civil rights complaint concerning a defective roof installed at her home. She named as defendants a township construction department, a township building department, and the township tax assessor. The matter

was assigned to the Subject Judge. The Subject Judge dismissed certain claims as time-barred and permitted Complainant the opportunity to amend her complaint. Complainant sought reconsideration, and the Subject Judge denied the motion.

Complainant amended the complaint and the parties filed cross-motions to dismiss and for summary judgment. Complainant also moved for the Subject Judge's recusal on grounds of a conflict of interest and an appearance of bias. Specifically, Complainant alleged that, more than a decade ago and prior to taking the bench, the Subject Judge represented one of the individuals who now works at the law firm that is acting as defense counsel in Complainant's civil case.

After a hearing, the Subject Judge granted the recusal motion and the matter was assigned to a new District Judge.¹ The Subject Judge did not rule on the dispositive motions prior to recusal, and they remain pending. In addition, Complainant has moved to vacate all rulings issued by the Subject Judge, has renewed interlocutory motions that the Subject Judge previously denied, including motions for the appointment of counsel and for a default judgment, has filed a motion for discovery into recusal-related issues, and has filed an opposition to the reassignment of the case to the new District Judge. Those motions also remain pending.

In this complaint of judicial misconduct, Complainant alleges that the Subject Judge failed to disclose his past professional relationship with an attorney at the firm that

¹ The new District Judge is not named as a Subject Judge of this complaint.

is representing the defendants in Complainant's action.² Although the Subject Judge granted Complainant's motion and recused himself, she alleges that he "claim[ed] ignorance on [the] issue [of] his [past] employment" and seeks an investigation and "full disclosure." Complainant characterizes the Subject Judge's alleged past employment as a use of the office to obtain special treatment for friends and as partisan political activity.

Complainant further alleges that the Subject Judge treated her in a demonstrably egregious manner by telling her that she was "doing pretty good without assignment of a pro bono attorney" and because the Subject Judge did not take action when Complainant advised him that she was not receiving court documents or was receiving them late. Complainant also alleges that the Subject Judge "ignored" her claims of discrimination by ordering her to amend her complaint. Based upon these allegations, Complainant questions "the judicial and mental fitness" of the Subject Judge.

Complainant's allegations reflecting her disagreement with the Subject Judge's decisions to deny her motion for the appointment of counsel and to order amendment of the complaint 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

² Complainant also alleges that the Subject Judge worked as a prosecutor for the defendant township in 2006, 2007, and 2008. It is a matter of public record, however, that the Subject Judge was elevated to the bench in 2006. Accordingly, this allegation is factually unsupported and frivolous. 28 U.S.C. § 352(b)(1)(A)(iii); Rule 11(c)(1)(C),(D), *Rules for Judicial-Conduct and Judicial-Disability Proceedings*.

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*. Moreover, Complainant has filed renewed motions requesting that the presiding District Judge consider these issues, and her motions remain pending. This administrative forum does not provide another opportunity to pursue the same 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 will be dismissed.

Next, Complainant’s allegations concerning a failure to timely receive court documents do not implicate the Subject Judge. Rather, service of court documents is a responsibility of District Court Clerk’s Office staff. Such staff members are not federal judges and therefore 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*. Such allegations are therefore subject to dismissal.

Finally, Complainant’s claims concerning the Subject Judge’s alleged past representation of a member of defense counsel’s law firm do not give rise to an inference of judicial misconduct. Without more, the existence of such a relationship more than a decade ago is not one that would require disqualification. *See* Canon 3(C), Code of

Conduct for United States Judges.³ Moreover, the Subject Judge stated during the recusal hearing that he had no memory whatsoever of the purported conflict raised by Complainant. Even so, the Subject Judge stated on the record that he would contact his former law firm to determine whether the representation had occurred and, apparently in an abundance of caution, ultimately recused himself from Complainant's proceeding.

The Subject Judge's employment more than a decade in the past does not constitute partisan political activity, nor does it reflect use of the judicial office to obtain favors for friends as Complainant has alleged. Accordingly, these allegations are subject to dismissal as 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)(D), *Rules for Judicial-Conduct and Judicial-Disability Proceedings*. Moreover, because the Subject Judge is no longer participating in Complainant's case and all of Complainant's previously ruled upon motions have been renewed before a new presiding judge, intervening events have rendered many of Complainant's allegations moot. Rule 11(e), *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).

³ 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*.

s/ D. Brooks Smith
Chief Judge

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ORDER

(Filed: November 29, 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: November 29, 2018