

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

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J.C. Nos. 03-19-90010, 03-19-90011, 03-19-90012,  
03-19-90013, 03-19-90014, 03-19-90015

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IN RE: COMPLAINTS OF JUDICIAL MISCONDUCT  
OR DISABILITY

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

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MEMORANDUM OPINION

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(Filed: March 22, 2019)

PRESENT: SMITH, *Chief Judge*.

These complaints are filed under the Judicial Conduct and Disability Act, 28 U.S.C. §§ 351-64, against five United States District Judges (“Subject Judge I” through “Subject Judge V”) and one United States Bankruptcy Judge (“Subject Judge VI”).<sup>1</sup> For the reasons discussed below, the complaints 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

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<sup>1</sup> The complaints refer to actions taken by state court judges, attorneys, and a bank. Such allegations will not be considered because individuals and entities that are not federal judges 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*. In addition, the complaints include allegations referring to a retired federal judge. Complaints under the Judicial Conduct and Disability Act may only be filed against judges currently holding an office described in Rule 4 of the *Rules for Judicial-Conduct and Judicial-Disability Proceedings*. *See* Rule 8(c), *Rules for Judicial-Conduct and Judicial-Disability Proceedings*. Accordingly, no complaint was docketed as to the retired federal judge, and those allegations also will not be considered.

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 is a frequent pro se litigant; as she acknowledges, there are “too many to list.” Complainant, with her elderly parents and disabled son (for whom she has power of attorney documentation), have participated in court proceedings before Subject Judges I through VI. These proceedings include:

- A civil rights complaint filed by Complainant on behalf of her father. After Subject Judge I directed that the complaint must be filed by the true party in interest and Complainant’s father did not file, the matter was dismissed.
- A civil rights complaint initially filed by Complainant on behalf of herself, her parents, and her son against, *inter alia*, Subject Judge IV. After Subject Judge I directed that the complaint must be filed by the true parties in interest, Complainant’s son filed the complaint and Subject Judge I dismissed it for failure to state a claim.
- A civil rights complaint filed by Complainant’s son, which Subject Judge II dismissed as frivolous and for failure to state a claim.
- A civil rights complaint filed by Complainant and her mother, in which Subject Judge III initially denied permission to proceed *in forma pauperis* on grounds that the plaintiffs had sufficient funds to pay court fees. Subject Judge later

reconsidered, granted IFP status, and dismissed the complaint for failure to state a claim.

- A civil rights complaint filed by Complainant, her son, and others, which Subject Judge IV dismissed for failure to state a claim. On appeal, the Court of Appeals affirmed the dismissal.
- A civil rights complaint filed by Complainant, which Subject Judge IV dismissed as frivolous. On appeal, the Court of Appeals summarily affirmed.
- A habeas petition filed by Complainant's son, which Subject Judge V dismissed without prejudice for lack of subject matter jurisdiction.
- A bankruptcy petition filed by Complainant's father, which Subject Judge VI dismissed for failure to make plan payments.

Complainant has filed two complaints of judicial misconduct naming Subject Judges I through VI. In the first complaint, Complainant alleges that she has power of attorney for her parents and her son, and that “numerous officers of the Courts . . . have violated these . . . contracts.” Complainant queries, “Is this a habit, is there collusion, civil conspiracy, obstruction of justice, FRAUD . . .?” Complainant further alleges that numerous judges, including Subject Judges I through V denied her the right to represent herself and “denied/dismissed improperly” her complaints, allegedly demonstrating “civil conspiracy, fraud, violations of oath and ethics.” Complainant has appended voluminous exhibits to the complaint, including a state court complaint, correspondence with

attorneys, and state and federal court orders. Many of these exhibits pertain to a mortgage dispute between Complainant, her parents, and a bank.

In the second complaint of judicial misconduct, Complainant alleges that Subject Judge VI has violated her power of attorney contracts and states, “I am blowing the whistle on conspiracy, collusion and corruption in the Unified Judicial System.”

Complainant queries, “[h]as FRAUD been committed per F.R.C.P. 60(b)(3), by whom as was their [*sic*] other and ethics violations?” Complainant again has appended numerous exhibits to the complaint, which are duplicative of the exhibits to the first complaint.

It is clear that Complainant’s allegations reflect her disagreement with decisions and rulings by the six Subject Judges, including the disposition of the many court proceedings in which she has been involved. 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*). As Complainant has been repeatedly advised, 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 allegations are therefore subject to dismissal.

Complainant’s remaining allegations do not give rise to an inference of judicial misconduct. Complainant provides no evidence to support her claims of fraud, collusion, obstruction of justice, and similar misconduct. Upon review, the records in Complainant’s numerous proceedings do not substantiate these claims. Because the allegations of

misconduct are entirely unsubstantiated, they 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 complaints will be dismissed pursuant to 28 U.S.C. § 352(b)(1)(A)(i), (ii), and (iii). To date, Complainant has filed six judicial misconduct complaints, all of which have been dismissed as merits-related, unsupported, and frivolous. *See* J.C. Nos. 03-13-90007, 03-13-90078, 03-13-90079, 03-14-90096, 03-19-90010–15. Complainant has been warned in three separate opinions that continued abuse of the judicial misconduct complaint procedure could result in the imposition of filing restrictions under Rule 10, *Rules for Judicial-Conduct and Judicial-Disability Proceedings*. *See* J.C. Nos. 03-13-90078, 03-13-90079, 03-14-90096. Complainant nonetheless filed the two current complaints naming six federal judges. These complaints are once again merits-related, frivolous, and unsupported. Accordingly, a copy of this Memorandum Opinion and Order will be transmitted to the Judicial Council to determine whether to issue an order to show cause why Complainant should not be enjoined from filing further complaints under the Judicial Conduct and Disability Act. *See* Rule 10(a), *Rules for Judicial-Conduct and Judicial-Disability Proceedings*.<sup>2</sup>

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<sup>2</sup> Rule 10(a) of the *Rules for Judicial-Conduct and Judicial-Disability Proceedings* provides:

Abusive Complaints. A complainant who has filed repetitive, harassing, or frivolous complaints, or has otherwise abused the complaint procedure, may

s/ D. Brooks Smith

Chief Judge

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be restricted from filing further complaints. After giving the complainant an opportunity to show cause in writing why his or her right to file further complaints should not be limited, the judicial council may prohibit, restrict, or impose conditions on the complainant's use of the complaint procedure. Upon written request of the complainant, the judicial council may revise or withdraw any prohibition, restriction, or condition previously imposed.

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

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ORDER

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(Filed: March 22, 2019)

PRESENT: SMITH, *Chief Judge*.

On the basis of the foregoing opinion entered on this date, it is ORDERED AND ADJUDGED that the written complaints brought pursuant to 28 U.S.C. § 351 are 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](http://www.ca3.uscourts.gov).

s/ D. Brooks Smith

Chief Judge

Dated: March 22, 2019