

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. Nos. 03-20-90081 and 03-20-90082

IN RE: COMPLAINT OF JUDICIAL MISCONDUCT
OR DISABILITY

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

MEMORANDUM OPINION

(Filed: December 1, 2020)

PRESENT: SMITH, *Chief Judge*.

This complaint is filed under the Judicial Conduct and Disability Act, 28 U.S.C. §§ 351-64, against a United States Magistrate Judge (“Subject Judge I”) and a United States District Judge (“Subject Judge II”). For the reasons discussed below, the complaint will be dismissed.¹

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).

¹ Complainant previously filed two complaints of judicial misconduct against a bankruptcy judge. Both complaints were dismissed as frivolous and merits-related. J.C. Nos. 03-20-90018 and 03-20-90029.

Complainant and her son were involved in a physical altercation with three police officers at a hospital. Based on that altercation, Complainant and her son filed a civil suit against the police officers and the city alleging civil rights violations. Subject Judges I and II presided over this matter. Subject Judge II issued a decision concluding that the parties had achieved a settlement. Complainant filed an appeal, arguing that settlement had not been achieved. A panel of judges from the United States Court of Appeals for the Third Circuit remanded for the limited purpose of allowing an evidentiary hearing. Thereafter a hearing was scheduled, but Complainant and her son did not appear to testify. Subject Judge II issued an order enforcing settlement of all claims. Complainant and her son subsequently filed another lawsuit against a utility company and others for alleged harassment and civil rights violations and this new case was assigned to Subject Judges I and II.²

In the present complaints of judicial misconduct, Complainant makes allegations concerning the putative actions of defendants, a prosecutor, and a municipal court judge, among others. Only federal judges, however, are covered by the Judicial Conduct and Disability Act. Accordingly, Complainant's allegations against these individuals and entities cannot be addressed in this proceeding. 28 U.S.C. § 352(b)(1)(A)(i); Rule 1, *Rules for Judicial-Conduct and Judicial-Disability Proceedings*.

Complainant further alleges that Subject Judge I forced a settlement in the prior civil suit discussed above and is part of a conspiracy. Complainant further argues that

² This complaint has been dismissed with prejudice and a motion for reconsideration is pending.

Subject Judge I should have recused herself from her new civil suit and should not have reduced the time for a response. Complainant also insists that Subject Judge I should have disciplined the defendants' attorneys. Complainant contends that Subject Judge II has also engaged in misconduct because she "signed off" on Subject Judge I's actions, among other allegations. It is evident that Complainant seeks to dispute the merits of the Subject Judges' procedural rulings and decisions. Allegations disputing the merits of judicial rulings do not constitute cognizable misconduct under the Judicial Conduct and Disability Act. "Cognizable misconduct does not include an allegation that calls into question the correctness of a judge's ruling, including a failure to recuse." Rule 4(b)(1), *Rules for Judicial-Conduct and Judicial-Disability Proceedings*. Merits-related allegations are not cognizable as misconduct because 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). Thus, all such non-cognizable allegations are subject to dismissal. *See* 28 U.S.C. § 352(b)(1)(A)(ii); Rules 4(b)(1), 11(c)(1)(B), *Rules for Judicial-Conduct and Judicial-Disability Proceedings*.

To the extent that Complainant's allegations are not based solely on her disagreement with the merits of the Subject Judges' rulings, they are unsubstantiated. There is no evidence of favoritism, bias, "complacency with adversaries," prejudice, collusion, or corruption. Nor has Complainant provided any evidence that Subject Judge I

engaged in an improper ex parte communication with Complainant's former lawyer. Complainant's remaining allegations are therefore 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*. Indeed, as stated in an opinion issued by a panel of Third Circuit Court of Appeals judges regarding Complainant's initial civil suit, "We are of the opinion that the District Court admirably fulfilled its duties under Fed. R. Civ. P. 72." As Complainant appears to be engaged in the abuse of the complaint procedure, Complainant is hereby cautioned pursuant to Rule 10(a) of the *Rules for Judicial-Conduct and Judicial-Disability Proceedings*.³

Based on the above, this complaint will be dismissed under 28 U.S.C. § 352(b)(1)(A)(i), (ii), and (iii).

s/ D. Brooks Smith
Chief Judge

³ 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 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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ORDER

(Filed: December 1, 2020)

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: December 1, 2020