



## Legal Analysis

Dougherty's filing at ECF No. 188 is fairly interpreted as a motion for preliminary injunctive relief. In his caption, Dougherty seeks to "void" Third Circuit Internal Operating Procedure ("I.O.P.") 10.6 and Third Circuit Local Appellate Rule ("L.A.R.") 27.4, which enable the court of appeals to take summary action if an appeal fails to present a substantial question. *See, e.g., Thomas v. Union Cty. Court*, No. 18-3025, 2019 WL 974686, at \*2 (3d Cir. Feb. 27, 2019) (summarily affirming district court). As best the court can understand the filing, Dougherty is asking a district court (the District Court for the Middle District of Pennsylvania) to declare void the internal operating procedures and local appellate rules of a superior court (the United States Court of Appeals for the Third Circuit). Dougherty argues that "All 3<sup>rd</sup> Cir. Local rules are void!" (ECF No. 188 at 5). The remainder of Dougherty's filing appears to be random, stream-of-consciousness ranting that is not directed to the relief sought.

Dougherty's motion is entirely without merit and must be denied. First, this court has no jurisdiction or authority to enjoin the rules and procedures of a superior court. As explained in *Allegheny Gen. Hosp. v. N.L.R.B.*, 608 F.2d 965, 970 (3d Cir. 1979): "(P)recedents set by the higher courts . . . are conclusive on the lower courts, and leave to the latter no scope for independent judgment or discretion." Second, any modification to the L.A.R.s and I.O.P.s must go through a specified amendment process. Congress provided, by statute, that such rules "shall remain in effect unless modified or abrogated by the Judicial Conference." 28 U.S.C. § 2071(c)(2). The courts of appeals are required to appoint an advisory committee for the study of the rules of practice and internal operating procedures of such court. 28 U.S.C. § 2077(b). *See* L.A.R. 47.1 ("Any proposed change in the Third Circuit Local Appellate Rules will be

forwarded for comment to the Lawyers Advisory Committee, which constitutes the advisory committee for the study of the rules of practice as required by 28 U.S.C. § 2077(b).”). In sum, the motion for injunctive relief filed by Dougherty in this court is frivolous.

Conclusion

For the foregoing reasons, the motion for preliminary injunction filed pro se by plaintiff Keith Dougherty (“Dougherty”) (ECF No. 188) will be denied.

An appropriate order follows.

March 13, 2019

By the court:

/s/ Joy Flowers Conti  
Joy Flowers Conti  
Senior United States District Judge

