

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. No. 03-16-90014

IN RE: COMPLAINT OF JUDICIAL MISCONDUCT
OR DISABILITY

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

MEMORANDUM OPINION

(Filed: April 14, 2016)

PRESENT: McKEE, Chief Judge.

This is a complaint filed under the Judicial Conduct and Disability Act, 28 U.S.C. §§ 351-64, against a United States Bankruptcy 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).

Complainant is a pro se bankruptcy debtor in a matter pending before the Subject Judge. The matter is ongoing. Complainant has filed four appeals of the Subject Judge's decisions to the District Court, which are currently pending.

This complaint of judicial misconduct consists of a copy of a motion for the Subject Judge's recusal, with numerous attachments, that Complainant filed in Bankruptcy Court. The recusal motion alleges that the Subject Judge exhibited bias and prejudice against her. The motion details nine specific incidents of alleged misconduct: (1) a hearing at which the Subject Judge allegedly "refused to listen to any reasonable argument" and "frightened and confused" Complainant; (2) a motion for reconsideration that the Subject Judge denied, "hav[ing] none of it"; (3) a hearing at which the Subject Judge allegedly "offer[ed] legal advice" to opposing counsel but not to Complainant; (4) a hearing at which the Subject Judge allegedly "appeared to deliberately rush and evade[] the issues Debtor brought up"; (5) an opinion by the Subject Judge that allegedly "misinterprets and corrupts" a Supreme Court case and "completely ignor[es]" other legal authority; (6) the same opinion by the Subject Judge, which allegedly "create[s] facts not in evidence"; (7) a hearing during which the Subject Judge allegedly "prevent[ed]" Complainant from questioning opposing counsel, "obstructing her Due Process Right to ask a question"; (8) the Subject Judge's prior affiliation with a law firm before taking the bench, during which time Complainant alleges that he "may have represented" the creditor in Complainant's case, although "she does not have proof at present"; and (9) a hearing

during which the Subject Judge allegedly “had PRE-DETERMINED the outcome of the hearing in advance” because he read from a prepared order denying Complainant’s motions. After a hearing, the Subject Judge orally denied the motion for recusal.

Because Complainant’s allegations are based entirely on a motion for recusal that was denied by the Subject Judge, 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 are not appropriately raised in a judicial misconduct proceeding. 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). Because the allegations do not constitute cognizable misconduct, they are dismissed. 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.

Moreover, because Complainant’s claims of judicial 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. A

review of the record, including the materials Complainant submitted in support of her recusal motion, does not lend support to her claims of judicial misconduct on the part of the Subject Judge. The portions of the transcripts Complainant provided demonstrate that the Subject Judge was patient, respectful, and permitted Complainant to fully present her arguments. They do not support allegations that the Subject Judge rushed or intimidated Complainant or provided inappropriate assistance to opposing counsel.¹

With regard to Complainant's claim of an appearance of impropriety, Complainant's suspicion that the Subject Judge may have once represented the creditor in her bankruptcy proceeding is far from sufficient to give rise to an inference that misconduct has occurred. Her sole support is a copy of an internet printout indicating that, before taking the bench, the Subject Judge was a bankruptcy practitioner who represented creditors. It is commonplace that a Bankruptcy Judge would have past experience as a bankruptcy practitioner, and Complainant herself recognizes that she has no evidence that the Subject Judge actually represented the creditor in her bankruptcy case. Complainant's assumption simply is not reasonable and the claim is therefore unsupported. Accordingly, it is dismissed. 28 U.S.C. § 352(b)(1)(A)(iii); Rule 11(c)(1)(D), Rules for Judicial-Conduct and Judicial-Disability Proceedings.

¹ The transcripts reflect that Complaint was uncooperative, argumentative, and frequently interrupted. For instance, during both hearings, Complainant repeatedly talked over the Subject Judge, stating "No, no, no, no, no" and "I object to everything," and ultimately left the courtroom before either hearing concluded.

Based on the foregoing, the complaint is dismissed pursuant to 28 U.S.C. §§ 352(b)(1)(A)(ii) and (iii).

s/ Theodore A. McKee
Chief Judge

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ORDER

(Filed: April 14, 2016)

PRESENT: McKEE, 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)(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/ Theodore A. McKee
Chief Judge

Dated: April 14, 2016