

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

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J.C. No. 03-16-90033

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IN RE: COMPLAINT 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: September 6, 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).

In 2015, Complainant filed a voluntary Chapter 13 bankruptcy petition. The matter was assigned to the Subject Judge. Complainant's ex-wife, a creditor, moved to dismiss the petition. The Subject Judge held a hearing on the motion to dismiss in October 2015, and decided to defer action on the motion pending discovery. Later, in January 2016, Complainant failed to appear at a scheduled hearing. The Subject Judge issued an order converting the matter to a Chapter 7 petition on the grounds that Complainant had been attempting to frustrate the collection efforts of his creditors, particularly his ex-wife. In June 2016, the Subject Judge closed the case without entry of a discharge because Complainant failed to complete a required instructional course on personal financial management. Complainant did not appeal.

In this complaint of judicial misconduct, Complainant alleges that the Subject Judge denied him his constitutional rights to free speech and due process.<sup>1</sup> Specifically, Complainant claims that the Subject Judge did not inform him of the January 2016 hearing, which he missed as a result. In addition, during the October 2015 hearing at which Complainant did appear, Complainant alleges that the Subject Judge interrupted him, accused him of being disrespectful, and told him not to speak unless spoken to. Complainant describes the Subject Judge as "sarcastic, threatening and demeaning," and

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<sup>1</sup> In addition to his allegations concerning the Subject Judge, Complainant alleges wrongdoing on the part of his retained attorney. Private attorneys 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. Accordingly, such allegations will not be addressed in this opinion.

states, “I want this stopped and all actions reversed.” In support of the complaint, Complainant filed an audio recording of the October 2015 hearing.

To the extent Complainant seeks review or reversal of the Subject Judge’s decisions and rulings, including the decision to convert his bankruptcy petition after he missed a hearing, this relief is not available in this administrative proceeding. Such allegations are merits-related, and merits-related allegations do not constitute cognizable judicial misconduct. See Rule 3(h)(3)(A), Rules for Judicial-Conduct and Judicial-Disability Proceedings (“An allegation that calls into question the correctness of a judge’s ruling, including a failure to recuse, without more, is merits-related.”). Such allegations are therefore subject to dismissal. 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.

To the extent Complainant claims the Subject Judge intentionally caused him to miss the January 2016 hearing, Complainant provides nothing to substantiate this claim. The docket reflects that the January 2016 hearing was scheduled during a December 2015 hearing that Complainant attended, and the docket was updated on that date to reflect the January 2016 hearing. Moreover, Complainant never filed anything subsequent to the missed hearing to attempt to reschedule the hearing or to explain his absence. Rather, the record reflects that Complainant stopped participating in the proceeding entirely until it was ultimately dismissed for failure to prosecute. Because this allegation is frivolous and

unsupported, it is subject to dismissal. 28 U.S.C. § 352(b)(1)(A)(iii); Rule 11(c)(1)(C), (D), Rules for Judicial-Conduct and Judicial-Disability Proceedings.

Finally, I turn to the allegations concerning the Subject Judge's statements and demeanor during the October 2015 hearing. According to Complainant, "[the Subject Judge] tells me that in her court I am not allowed to speak unless I'm spoken too [*sic*]. 'That's what I have a lawyer for' the Judge says." A review of the audio recording of the hearing confirms that this is substantially what the Subject Judge said, although the statements were not "sarcastic, threatening and demeaning," as Complainant alleges.

It is evident that Complainant's attorney was present at the October 2015 hearing and that the Subject Judge decided to hear argument from counsel rather than testimony from Complainant directly. It is well within the Subject Judge's discretion to determine when to hear from an individual who is appearing through counsel in the courtroom. The Subject Judge's direction to Complainant that he was not permitted to speak without permission – a direction that the Subject Judge also repeated to Complainant's ex-wife, who appeared pro se and similarly spoke out of turn during the course of the hearing – is far from support for a claim of judicial misconduct. Indeed, "expressions of impatience, dissatisfaction, annoyance, and even anger" arising during ordinary efforts at courtroom administration do not establish bias or partiality, unless they reveal such a high degree of antagonism or favoritism as to make fair judgment impossible. See Liteky v. United

States, 510 U.S. 540, 555 (1994); see also United States v. Wecht, 484 F.3d 194, 220 (3d Cir. 2007) (same).

The record does not provide evidence of antagonism, favoritism, or any behavior that could rise to the level of demonstrably egregious and hostile treatment constituting judicial misconduct under Rule 3(h)(1)(D), Rules for Judicial-Conduct and Judicial-Disability Proceedings. Accordingly, Complainant's allegations 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 complaint is dismissed pursuant to 28 U.S.C. §§ 352(b)(1)(A)(i), (ii), and (iii).

s/ Theodore A. McKee  
Chief Judge

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ORDER

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(Filed: September 6, 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)(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/ Theodore A. McKee  
Chief Judge

Dated: September 6, 2016