

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. No. 03-17-90091

IN RE: COMPLAINT OF JUDICIAL MISCONDUCT
OR DISABILITY

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

MEMORANDUM OPINION

(Filed: February 9, 2018)

PRESENT: SMITH, *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 filed a bankruptcy petition that was assigned to the Subject Judge. The Subject Judge dismissed the petition with prejudice for failure to pay the required

filing fee and barred Complainant from additional filings for a one-year period.

Complainant filed an appeal to the District Court, which is pending.

In this complaint of judicial misconduct, Complainant alleges that, during a status conference, the Subject Judge engaged in conduct prejudicial to the effective and expeditious administration of the business of the courts, including treating individuals in a demonstrably egregious and hostile manner, engaging in partisan political activity, retaliating against individuals for participating in the judicial misconduct complaint process, and engaging in conduct outside of official duties that causes a substantial and widespread lowering of public confidence in the courts among reasonable people. *See* Rule 3(h)(1)(D), (E), (G), and Rule 3(h)(2), *Rules for Judicial-Conduct and Judicial Disability Proceedings*. Rather than specify the factual basis for these allegations, Complainant has provided a transcript of the status conference in question.

A careful review of the transcript of the status conference reveals that Complainant's allegations are entirely baseless. The hearing addressed the schedule for payment of court fees and the identities of the individuals and entities on behalf of whom the bankruptcy petition was filed; the Subject Judge did not render any substantive rulings on the merits of the bankruptcy petition. During the entirety of the proceeding, the Subject Judge conducted himself in a professional, courteous, and respectful manner. He permitted Complainant ample opportunity to express himself on the record and to ask questions. The transcript includes no reference whatsoever to possible partisan political

activity, to Complainant's participation in misconduct complaint procedures, or to the Subject Judge's conduct outside of his official duties.

In addition, the record reveals no evidence whatsoever of egregious or hostile treatment. While Complainant did express frustration and confusion at times, the Subject Judge made efforts to appropriately clarify the record and manage the proceeding. Indeed, even if the Subject Judge had lost patience with Complainant (and he did not), "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 reveals no antagonism or favoritism, and discloses no actions on the part of the Subject Judge 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*.

In sum, the transcript of the status conference does not reflect any conduct prejudicial to the effective and expeditious administration of the business of the courts constituting judicial misconduct under Rule 3(h)(1)(D), *Rules for Judicial-Conduct and Judicial-Disability Proceedings*. Because Complainant has provided no evidence of misconduct on the part of the Subject Judge, this complaint is 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*.

In addition to this complaint, Complainant previously has filed three complaints of judicial misconduct naming seven federal judges. *See* J.C. Nos. 03-16-90005; 03-16-90006; 03-16-90007; 03-16-90046; 03-16-90047; 03-16-90048; 03-16-90049; 03-16-90087. Complainant's prior complaints were dismissed as non-cognizable, frivolous, and unsupported. In the opinion dismissing J.C. No. 03-16-90087, Complainant was warned that future 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*. Complainant nonetheless filed this complaint, which once again is 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*.¹

¹ Rule 10(a) of the *Rules of 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.

s/ D. Brooks Smith
Chief Judge

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ORDER

(Filed: February 9, 2018)

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)(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: February 9, 2018