

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. Nos. 03-17-90100, 03-17-90101

IN RE: COMPLAINT OF JUDICIAL MISCONDUCT
OR DISABILITY

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

MEMORANDUM OPINION

(Filed: February 14, 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 (“Subject Judge I”) and a United States Magistrate Judge (“Subject Judge II”). 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, a pro se bankruptcy petitioner in a matter before Subject Judge I, has filed a complaint of judicial misconduct naming Subject Judges I and II. In support of this complaint, Complainant has filed nearly one thousand pages of exhibits, which are largely copies of documents filed in the bankruptcy proceeding and in a related state court litigation involving several of Complainant's creditors.

In the misconduct complaint, Complainant alleges that Subject Judge I required him to file a certification in the bankruptcy proceeding, which, he claims, "is prejudicing me" and will provide an advantage to his creditors. Complainant contends that Subject Judge I has engaged in "overindulgence" of the creditors' claims, and has allowed them "to submit improper Certifications and continually misrepresent facts." Complainant further alleges that Subject Judge I, the Trustee, and his creditors are working together "to dismiss my bankruptcy based on their unsubstantiated claim for a 'frivolous lawsuit.'"¹ Finally, Complainant alleges that he "felt very intimidated" during a hearing, because security personnel was present in the courtroom. Complainant alleges that the guards made him feel "as if I was about to be placed under arrest."

With regard to Subject Judge II, Complainant alleges that, in the related state court litigation, a third party corporation failed to cooperate with discovery and was sanctioned

¹ Complainant alleges wrongdoing on the part of a number of individuals and entities that are not federal judges, including the Trustee, the bankruptcy creditors, and the third-party corporation and its president. Such individuals and entities are not subject to 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.

as a result. Complainant alleges that the president of the third party corporation is “a family member” of Subject Judge II, and Complainant has “just become aware that [Subject Judge II] is [Subject Judge I]’s Magistrate.” Complainant alleges that Subject Judge II had “an obligation to recognize the conflict, advise the parties, and recuse as necessary.”

At around the same time that Complainant filed this complaint of judicial misconduct, Complainant also filed a motion in the bankruptcy proceeding seeking to recuse Subject Judges I and II on essentially the same grounds presented in this complaint. In a detailed memorandum opinion and order, Subject Judge I denied the recusal motion, concluding that Complainant’s claims largely pertained to his disagreement with judicial rulings and did not establish actual bias or an appearance of bias that would warrant recusal. In addition, Subject Judge I observed that security guards are routinely present in the courtroom during hearings and their presence is not for the purpose of intimidation. As to the allegations concerning Subject Judge II, Subject Judge I stated that Subject Judge II sits in a separate court and does not work with him directly. Subject Judge I stated that “[Subject Judge II has not had any interaction with this case, and has not reviewed or issued any decisions in Debtor’s bankruptcy case. I have had no contact with [Subject Judge II] regarding this case, other than forwarding her a courtesy copy of the Recusal Motion because she was named in it.”

Many of Complainant's allegations are intended to challenge decisions rendered by Subject Judge I in the course of the bankruptcy proceeding, and are therefore merits-related. Indeed, Complainant's complaint of misconduct reiterates the allegations of his recusal motion, which was denied. "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 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*.

Moreover, a review of the record, including the voluminous material Complainant submitted in support of his complaint, does not lend support to a claim of judicial misconduct on the part of either Subject Judge. As Subject Judge I observed in the opinion disposing of the recusal motion, Subject Judge II simply has no involvement in Complainant's case. Thus, as a factual matter, any alleged family relationship between Subject Judge II and a third-party to the state court litigation cannot give rise to bias or a

conflict of interest in Complainant's bankruptcy proceeding. Complainant also has provided no evidence to substantiate the allegation that Subject Judge I is involved in a conspiracy with the Trustee and creditors, or that Subject Judge I has "overindulged" the creditors in the bankruptcy proceeding. And, Complainant's subjective feeling of intimidation at the presence of court security personnel is not a basis for an inference that misconduct has occurred. Due to increasing threats and acts of violence against federal judges and their families, the Judicial Conference of the United States has identified judicial security as a key priority. Accordingly, the presence of court security personnel is appropriate, and there is no indication that Subject Judge I asked that security personnel to be present for any improper purpose whatsoever. In sum, because Complainant's allegations of misconduct are entirely unsubstantiated, they are also 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/ D. Brooks Smith
Chief Judge

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ORDER

(Filed: February 14, 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)(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: February 14, 2018