

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

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J.C. No. 03-17-90102

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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: January 16, 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.<sup>1</sup>

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).

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<sup>1</sup> As a preliminary matter, Complainant makes various allegations concerning individuals who are not covered by the Judicial Conduct and Disability Act; i.e., clerk’s office employees, a trustee, counsel for the trustee, among others. Accordingly, these allegations will not be addressed in this opinion. *See* 28 U.S.C. §§ 351, 352(b)(1)(A)(i); Rule 4, *Rules for Judicial-Conduct and Judicial-Disability Proceedings*.

Complainant is a party in bankruptcy proceedings pending before the Subject Judge. The present complaint of judicial misconduct appears to be the same as the document that was docketed in the Third Circuit Court of Appeals as a request for a stay in Complainant's underlying bankruptcy proceedings. The document requests a stay "in all the lower Courts including the trial of the adversary proceeding . . . till the investigation is completed in the matter." The Judicial Conduct and Disability Act does not give me the authority to intervene in Complainant's pending appeal or other underlying bankruptcy proceedings. Proceedings under the Judicial Conduct and Disability Act are separate administrative proceedings. Accordingly, I express no opinion as to the merits of Complainant's pending request for a stay.

To the extent Complainant's document makes allegations of judicial misconduct concerning the Subject Judge, the complaint is subject to dismissal under the Act. Complainant's allegations are largely merits-related. For example, Complainant seeks the Subject Judge's recusal, a stay of the bankruptcy proceedings, and attempts to collaterally attack various rulings made by the Subject Judge; e.g., he "denied every motion that I filed." However, an "allegation that calls into question the correctness of a judge's ruling, . . . without more, is merits-related." Rule 3(h)(3)(A), *Rules for Judicial-Conduct and Judicial-Disability Proceedings*. Merits-related allegations do not constitute cognizable misconduct under the Judicial Conduct and Disability Act. *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*. Complainant's merits-related allegations are dismissed.

Furthermore, Complainant's voluminous attachments and the audio recordings of two hearings complained of by Complainant have been reviewed and there is no evidence of judicial misconduct. Indeed, the transcripts and audio recordings reflect that the Subject Judge has acted in a professional manner and do not support a claim of bias against pro se parties or judicial misconduct in any way. For example, Complainant complains about the presence of U.S. Marshals at one of her hearings "who were present to restrain" her and "intimidate" her. The audio recording and transcript of the hearing reflect that Complainant became upset at the end of a hearing and a U.S. Marshal approached her and told her to "sit down and relax" and that someone would bring her "a glass of water." Then the Subject Judge told her that the hearing was concluded and that she could go. This does not reflect any judicial misconduct or intimidation. Furthermore, although Complainant appears to allege that the Subject Judge was associated with prior litigation that would predispose him against her, an email attached to her own complaint contradicts this assertion. The email reflects that the Subject Judge (who was then an attorney) simply responded to correspondence that had been sent to him in error to inform the senders that they had mistakenly copied him. Complainant's remaining allegations of judicial misconduct are premised on baseless speculation and innuendo. Thus, Complainant's allegations are subject to dismissal as frivolous and unsupported by evidence that would raise an inference that misconduct has occurred. *See* 28 U.S.C. § 352(b)(1)(A)(iii); Rules 11(c)(1)(B), 11(c)(1)(D), *Rules for Judicial-Conduct and Judicial-Disability Proceedings*.

Based on the foregoing, this complaint will be 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

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(Filed: January 16, 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](http://www.ca3.uscourts.gov).

s/ D. Brooks Smith

Chief Judge

Dated: January 16, 2018