

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. No. 03-18-90023

IN RE: COMPLAINT OF JUDICIAL MISCONDUCT
OR DISABILITY

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

MEMORANDUM OPINION

(Filed: April 19, 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”).¹ 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

¹ This complaint presents allegations of misconduct on the part of a United States Trustee. A United States Trustee is not a federal judge and therefore is 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, allegations against the United States Trustee are beyond the scope of this proceeding and will not be addressed in this opinion.

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 petitioner in what is apparently his fourth bankruptcy petition since 2006. In the course of the bankruptcy proceeding, Complainant failed to appear at numerous meetings. After several continuances, the meetings were recently concluded and the bankruptcy petition remains pending. The United States Trustee also filed a related adversary proceeding against Complainant, in which the Subject Judge held a trial in December 2017.

Complainant failed to appear at trial, apparently having phoned the Subject Judge's chambers earlier that morning to advise that he could not travel due to weather conditions. During the trial, the Subject Judge acknowledged Complainant's absence, but stressed that the Court and the other parties had made numerous accommodations for Complainant in the past, that the trial had been long scheduled, that Complainant had notice of that fact, that the other parties had expended significant resources to appear for the trial as scheduled, and that, although it had snowed on Saturday prior to the trial, the weather on the trial day did not appear to the Subject Judge to be such that it would impair an individual's ability to travel. Accordingly, the trial proceeded in Complainant's absence, and the Subject Judge awarded judgment to the United States Trustee. Although Complainant has appealed at least one order during the course of the bankruptcy proceeding, Complainant did not appeal the judgment entered in the adversary proceeding.

In this complaint of judicial misconduct, Complainant alleges that he was unable to attend the December 2017 adversary proceeding trial due to a snow storm, that the Subject Judge's decision to proceed in his absence was a violation of his rights, and that the trial was a "sham." In addition, Complainant observes that, prior to trial, he filed a motion for the Subject Judge's recusal, but alleges that the Subject Judge never ruled on it. Finally, Complainant alleges that the Subject Judge "makes sure I am the last case in court" so that there will be no additional witnesses to the Subject Judge's alleged misconduct. Complainant claims the Subject Judge is engaged in a conspiracy with the United States Trustee and harbors a bias against him.

To the extent Complainant disputes the Subject Judge's decision to proceed with trial in his absence or is attempting to collaterally challenge the validity of the judgment against him, such allegations are merits-related. 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, . . . without more, is merits-related."). 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*. It is unclear why Complaint did not choose to appeal the judgment, but this administrative proceeding does not serve as a substitute for appeal. See *In re Memorandum of Decision of Judicial Conference Committee on Judicial Conduct and Disability*, 517 F.3d 558, 561 (U.S. Jud. Conf. 2008)

(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.”). Accordingly, all merits-related allegations are subject to dismissal.

Complainant’s remaining allegations are baseless. Complainant is simply incorrect that the Subject Judge failed to rule on the recusal motion; rather, the motion was denied as meritless during the trial at which Complainant did not appear.² Complainant provides no evidence whatsoever that the Subject Judge scheduled his hearings with a nefarious motive, conspired with the United States Trustee, or harbors a bias against him. Indeed, in disposing of the recusal motion, the Subject Judge expressly stated on the record that he does not hold any personal bias against Complainant. The remaining allegations of the complaint are therefore 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, this complaint will be dismissed pursuant to 28 U.S.C. §§ 352(b)(1)(A)(i), (ii), and (iii).

² A challenge to the recusal decision would constitute a non-cognizable merits-related allegation. See Rule 3(h)(3)(A), *Rules for Judicial-Conduct and Judicial-Disability Proceedings*.

s/ D. Brooks Smith
Chief Judge

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ORDER

(Filed: April 19, 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: April 19, 2018