

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

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J.C. No. 03-19-90036

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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: November 18, 2019)

PRESENT: SMITH, *Chief Judge*.

This complaint is 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 alleges that the Subject Judge engaged in judicial misconduct when he spoke about a bankruptcy case involving Complainant’s former company at two continuing legal education seminars, obtained special treatment for attorneys who were

the Subject Judge's friends, and interfered in the personal bankruptcy of another individual. Complainant further alleges that the Subject Judge should not have transferred an adversary proceeding to another judge in 2012 and thereafter failed to recuse himself after being reassigned to the same matter in 2016.

Complainant's allegations regarding the Subject Judge's statements at a continuing legal education seminar are subject to dismissal. As provided in Canon 3A(6):

A judge should not make public comment on the merits of a matter pending or impending in any court . . . . The prohibition on public comment on the merits does not extend to public statements made in the course of the judge's official duties, to explanations of court procedures, **or to scholarly presentations made for purposes of legal education.**

*Code of Conduct for United States Judges*, Canon 3A(6) (emphasis added). Accordingly, as the Subject Judge's discussion of the case was part of two continuing legal education seminars, the Subject Judge's actions do not run afoul of Canon 3. Furthermore, it is noteworthy that the Subject Judge entered an order confirming the master plan of reorganization in the underlying bankruptcy proceeding in 2007 and the CLE occurred in 2008. In addition, the transcript of the seminar that Complainant attached to his complaint has been reviewed and the comments in question do not constitute judicial misconduct under the circumstances presented here. Accordingly, these allegations are dismissed. 28 U.S.C. § 352(b)(1)(A)(iii); Rule 11(c)(1)(C), (D), *Rules for Judicial-Conduct and Judicial-Disability Proceedings*.

Complainant also alleges that the Subject Judge's comments at the seminars constitute evidence of bias or prejudice against Complainant. Complainant further alleges

that the Subject Judge is friends with the counsel for Complainant's former company and engaged in special treatment of the Subject Judge's friends. Complainant provides no support for his allegations of bias and special treatment other than his disagreement with the Subject Judge's decisions and procedural rulings. Moreover, Complainant raised similar allegations in a counseled mandamus petition that was denied by a District Judge earlier this year. Notably, this mandamus petition attached the transcript of the continuing education seminar that Complainant also complains of in the present administrative proceeding. Accordingly, Complainant's allegations are dismissed 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*.

Furthermore, to the extent Complainant seeks to collaterally attack the Subject Judge's decisions, including his putative failure to recuse himself upon reassignment of an adversary proceeding, the allegations do not constitute cognizable misconduct under the Judicial Conduct and Disability Act. Rule 4(b)(1), *Rules for Judicial-Conduct and Judicial-Disability Proceedings* ("Cognizable misconduct does not include an allegation that calls into question the correctness of a judge's ruling, including a failure to recuse."). All of Complainant's merits-related allegations are therefore subject to dismissal. *See* 28 U.S.C. § 352(b)(1)(A)(ii); Rules 4(b)(1), 11(c)(1)(B), *Rules for Judicial-Conduct and Judicial-Disability Proceedings*. Significantly, Complainant, who was represented by counsel in the adversary proceeding, never filed a formal motion to recuse the Subject

Judge, even though the Subject Judge raised recusal at a status conference and invited the parties to discuss with their counsel if they were “comfortable” with having the Subject Judge “go forward.” Instead, after retaining new counsel a year later, Complainant belatedly sought the Subject Judge’s recusal by means of filing the aforementioned unsuccessful petition for a writ of mandamus.<sup>1</sup> There is no evidence of judicial misconduct.

Based on the foregoing, this complaint will be dismissed pursuant to 28 U.S.C. § 352(b)(1)(A)(ii) and (iii).

s/ D. Brooks Smith  
Chief Judge

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<sup>1</sup> About a year after the hearing during which the Subject Judge raised the potential recusal issue, this new attorney, who had not yet entered an appearance in the case, submitted a letter on behalf of Complainant requesting that the Subject Judge recuse himself and that an upcoming hearing be adjourned. The Subject Judge took no action in response to this letter because it was not filed by an attorney of record. In any event, even after entering his appearance, Complainant’s new counsel did not thereafter file a recusal motion. Rather, Complainant’s attorney filed the unsuccessful petition for writ of mandamus discussed above – more than a year after entering his appearance and more than two years after the hearing when the Subject Judge invited the parties to address recusal.

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ORDER

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(Filed: November 18, 2019)

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)(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: November 18, 2019