

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

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J.C. No. 03-21-90009

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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: May 25, 2021)

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, who is not a party to the underlying bankruptcy matter, alleges that the Subject Judge has an “undisclosed” relationship with a trustee and should have recused. Complainant alleges that the trustee helped the Subject Judge rent a home

located close to the trustee's house. Complainant also claims that the Subject Judge's subsequent move ten days after a district court filing listing this address is evidence of judicial misconduct. Finally, Complainant views the Subject Judge's role as a founding member of a charitable organization that the trustee also was an active member of, and the Subject Judge's role on a "First Advisory Board," as evidence of judicial misconduct.<sup>1</sup>

It is apparent that Complainant's allegations reflect his dissatisfaction with the Subject Judge's refusal to recuse herself from a bankruptcy matter and his disagreement with other rulings. Allegations disputing the merits of judicial rulings do not, however, constitute cognizable misconduct under the Judicial Conduct and Disability Act.

"Cognizable misconduct does not include an allegation that calls into question the correctness of a judge's ruling, including a failure to recuse." Rule 4(b)(1), *Rules for Judicial-Conduct and Judicial-Disability Proceedings*. 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). Accordingly, Complainant's non-cognizable allegations are subject to dismissal. *See* 28

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<sup>1</sup> Complainant's allegations concerning individuals who are not federal judges, such as a trustee and another attorney, will not be addressed in these proceedings because only federal judges are 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*.

U.S.C. § 352(b)(1)(A)(ii); Rules 4(b)(1), 11(c)(1)(B), *Rules for Judicial-Conduct and Judicial-Disability Proceedings*.

To the extent Complainant's allegations are not merits-related, they are baseless. A review of the record reveals no evidence for the existence of judicial misconduct. Complainant's baseless speculation about the location of the Subject Judge's temporary home rental and subsequent move are not evidence of judicial misconduct. Indeed, as stated by the Subject Judge in the course of a hearing, the Subject Judge was unaware of the proximity of the two addresses in question until the addresses were listed in a district court filing. Moreover, the Subject Judge recalls (based on prior knowledge) that the trustee's former wife lives at the address in question and not the trustee. Furthermore, the fact that the Subject Judge and the trustee were both active in the same nonprofit organization is not evidence of judicial misconduct. Nor is the putative fact that an attorney and/or his firm contributed to a non-profit organization while the Subject Judge served on the board of that organization evidence of judicial misconduct.<sup>2</sup> Finally, the Subject Judge's attendance at bench and bar events is not evidence of judicial misconduct. Thus, Complainant's remaining allegations are 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*.

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<sup>2</sup> Complainant's unsworn supplement listing links to records of donations provides no evidence of judicial misconduct.

Based on the foregoing, this complaint will be dismissed pursuant to 28 U.S.C. § 352(b)(1)(A)(i), (ii), and (iii). In view of the frivolous and harassing allegations in the complaint, Complainant is cautioned pursuant to Rule 10 of the *Rules for Judicial-Conduct and Judicial-Disability Proceedings*.<sup>3</sup>

s/ D. Brooks Smith  
Chief Judge

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<sup>3</sup> Rule 10(a) of the *Rules for Judicial-Conduct and Judicial-Disability Proceedings* provides:

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.

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ORDER

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(Filed: May 25, 2021)

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: May 25, 2021