

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. No. 03-21-90063

IN RE: COMPLAINT OF JUDICIAL MISCONDUCT
OR DISABILITY

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

MEMORANDUM OPINION

(Filed: December 9, 2021)

PRESENT: CHAGARES, 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 (“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, appearing as an interested party in a bankruptcy proceeding before the Subject Judge, filed a motion for the Subject Judge’s recusal. In the recusal motion, Complainant alleged that the Subject Judge is not impartial because of a purported

“personal relationship” between the Subject Judge and the Bankruptcy Trustee.

Specifically, Complainant contended that the Subject Judge and Trustee lived in the same neighborhood and attended some of the same professional events. The Subject Judge held a hearing on the recusal motion, which Complainant did not attend. The Subject Judge denied the motion, concluding there was no basis for recusal.

In this complaint of judicial misconduct, Complainant reiterates the belief that the Subject Judge and Bankruptcy Trustee “are friends” because they lived in the same neighborhood and have been involved in some of the same professional organizations. In addition, Complainant alleges that, more than a decade ago, the Bankruptcy Trustee made contributions to a charity for which the Subject Judge served as administrator, and that the Subject Judge once worked professionally with a friend of the Bankruptcy Trustee. Based upon these allegations, Complainant alleges an improper “undisclosed personal relationship” between the Subject Judge and the Bankruptcy Trustee.

Complainant’s allegations largely concern the Subject Judge’s denial of the recusal motion. Allegations concerning a failure to recuse, without more, are related to the merits of a procedural ruling and therefore 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.”). “The misconduct procedure [under the Judicial Conduct and Disability 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 recusal-related allegations are non-cognizable and 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.

Moreover, even assuming the truth of the allegations, the facts alleged do not give rise to a reasonable inference that judicial misconduct has occurred. There is no evidence that membership in professional groups or charities unrelated to the proceeding gives rise to an appearance that the Subject Judge cannot be impartial. See Canon 4, Code of Conduct for United States Judges (a judge may engage in extrajudicial activities that are consistent with the obligations of judicial office, including membership in organizations devoted to the law, legal system, and administration of justice).¹ Similarly, the existence of a professional relationship or acquaintanceship between the Subject Judge and Bankruptcy Trustee or a friend of the Bankruptcy Trustee does not automatically give rise to a circumstance in which the Subject Judges' impartiality might reasonably be questioned. See, e.g., Canon 3(C)(1)(d), Code of Conduct for United States Judges (requiring disqualification where "the judge or the judge's spouse, or a person related to

¹The Code of Conduct for United States Judges is designed to provide guidance to judges, but is not a set of disciplinary rules. "Ultimately, the responsibility for determining what constitutes misconduct under the statute is the province of the judicial council of the circuit subject to such review and limitations as are ordained by the statute and by these Rules." Commentary on Rule 3, Rules for Judicial-Conduct and Judicial-Disability Proceedings.

either within the third degree of relationship” is a party to the proceeding). In addition, Complainant fails to identify any authority giving rise to a duty on the part of the Subject Judge to disclose the sort of acquaintanceship alleged in the complaint. Thus, the allegations of the complaint 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.

Finally, it is noted that Complainant included the home address of the Subject Judge both in this complaint of misconduct and in the motion for recusal, which was placed on the public docket. It is unclear why or how Complainant obtained this information. Complainant is strongly cautioned against disclosing personal information of judges. Pursuant to Rule 10 of the Rules for Judicial-Conduct and Judicial-Disability Proceedings, misuse of the judicial misconduct complaint procedure to harass or endanger a judge may result in the imposition of restrictions pursuant to this provision.² In addition, Complainant is advised that the judiciary, and the undersigned, take matters of judicial

² 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.

security extremely seriously. When necessary, appropriate authorities will be advised of inappropriate disclosures in order to ensure the safety and protection of all.

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

s/ Michael A. Chagares
Chief Judge

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ORDER

(Filed: December 9, 2021)

PRESENT: CHAGARES, 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.

s/ Michael A. Chagares
Chief Judge

Dated: December 9, 2021