

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. No. 03-22-90045

IN RE: COMPLAINT OF JUDICIAL MISCONDUCT
OR DISABILITY

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

MEMORANDUM OPINION

(Filed: August 18, 2022)

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, a creditor in a bankruptcy matter who is proceeding pro se, alleges that the Subject Judge has shown unfair favoritism to the bankruptcy debtor. Complainant claims that the Subject Judge “[a]t every turn” has ruled against the creditors, won’t allow

Complainant to fully answer questions during hearings, suggested that Complainant's litigation efforts would not be successful, and won't permit Complainant's witnesses to testify. In contrast, Complainant alleges that the Subject Judge has permitted the debtor "to talk and say whatever she wanted," "ignore[d] the issue" when the debtor committed perjury, allowed the debtor to present any witnesses she wanted, and directed the debtor's attorney to object to Complainant's statements. Complainant suspects "some type of relationship there" and argues that the Subject Judge should have recused himself. Complainant has appended a transcript of a hearing before the Subject Judge in support of the complaint.

Many of the allegations of the complaint are intended to challenge rulings rendered by the Subject Judge during the course of the ongoing bankruptcy proceeding, including decisions about witness appearances and hearing testimony. Such allegations are merits related and do not constitute cognizable misconduct. 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."). Indeed, inasmuch as a final judgment has not yet been entered, the Subject Judge's rulings may in the future be the subject of an appeal if Complainant chooses to pursue one. "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).

Complainant's merits-related allegations are therefore subject to dismissal.¹ 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.

Complainant's non-merits-related claim of bias lacks substantiation. The transcript Complainant has provided shows that the Subject Judge expressed some frustration with Complainant during the hearing in question. Yet "expressions of impatience, dissatisfaction, annoyance, and even anger" do not establish bias or partiality unless they reveal such a high degree of antagonism or favoritism as to make fair judgment impossible. Liteky v. United States, 510 U.S. 540, 555 (1994); see also United States v. Wecht, 484 F.3d 194, 220 (3d Cir. 2007) (same). The record here neither satisfies the Liteky standard nor reflects antagonism or favoritism or rising to the level of demonstrably egregious and hostile treatment constituting judicial misconduct under Rule 4(a)(2)(B), Rules for Judicial-Conduct and Judicial-Disability Proceedings. Complainant's remaining allegations are therefore subject to dismissal as unsupported by evidence that would raise an inference that misconduct has occurred. 28 U.S.C.

¹ Complainant requests recusal in this administrative proceeding. A review of the docket in the bankruptcy matter reveals, however, that Complainant never filed a motion seeking that relief. A request for recusal must be presented to the presiding judge in the first instance. A substantive decision rendered on a recusal motion is merits-related and non-cognizable. See Rule 4(b)(1), Rules for Judicial-Conduct and Judicial-Disability Proceedings.

§ 352(b)(1)(A)(iii); Rule 11(c)(1)(D), Rules for Judicial-Conduct and Judicial-Disability Proceedings.

Based on the foregoing, the 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: August 18, 2022)

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: August 18, 2022