

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

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J.C. No. 03-23-90023

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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: October 10, 2023)

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 is the spouse of a bankruptcy debtor who is in proceedings before the Subject Judge. Complainant and her spouse are longtime residents of a property that is the subject of foreclosure and is at the center of the bankruptcy dispute. The property

eventually was sold at auction to an individual who filed a state court ejectment action; the Subject Judge granted the property owner relief from the automatic bankruptcy stay to pursue ejectment. On appeal, the District Court affirmed that decision. The debtor sought reconsideration, which the Subject Judge denied. The District Court again affirmed. The District Court's opinion also included a warning that the debtor presented a baseless and reckless accusation against the Subject Judge that could give rise to sanctions under Rule 11 of the Federal Rules of Civil Procedure.<sup>1</sup> The debtor has appealed to the Court of Appeals. The appeal and the underlying bankruptcy proceedings remain ongoing.

In this complaint of judicial misconduct, Complainant alleges that the bankruptcy creditors, including the property owner, engaged in fraud and other improper activity.<sup>2</sup> The property owner allegedly is the same ethnicity as the Subject Judge, and Complainant claims that the Subject Judge's rulings in favor of the creditors are a result of racial favoritism. Complainant further alleges that the Subject Judge treated the debtor, who is of a different race from the Subject Judge, with sarcasm and contempt, improperly barred him from presenting evidence in support of his claims, knowingly made false statements to his detriment, and created a hostile environment for the debtor and for others of the debtor's race. Complainant further alleges that the Subject Judge "disparages other

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<sup>1</sup> The debtor alleged that the Subject Judge considered information improperly obtained via a "friendship" with the property owner. The District Court observed that the information in question was part of the record.

<sup>2</sup> Complainant presents allegations against a number of individuals who are not federal judges and therefore are not covered by the Judicial Conduct and Disability Act. See 28 U.S.C. §§ 351, 352(b)(1)(A)(i); Rule 1, Rules for Judicial-Conduct and Judicial-Disability Proceedings. These non-cognizable allegations will not be addressed in this opinion.

Judges in open Court,” making comments about a retired Bankruptcy Judge that Complainant describes as cruel, belittling, and unprofessional. Complainant concludes by alleging that the Subject Judge is a bully and has “created an atmosphere so hostile and racially divisive that it is frightening.”<sup>3</sup>

It appears Complainant is attempting to collaterally challenge several judicial rulings, including the Subject Judge’s decision to grant the property owner relief from the bankruptcy stay. These 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.”).

The Subject Judge’s decision was reviewed by the District Court and was affirmed. This administrative proceeding does not provide an additional opportunity for substantive review of that determination. “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. See 28 U.S.C.

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<sup>3</sup> Complainant additionally presents allegations against the Subject Judge and others in a supplement to the complaint that was not signed under penalty of perjury. The supplement was reviewed under Rule 5(a) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings and does not set forth reasonable grounds for inquiry into whether judicial misconduct occurred.

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

Complainant alleges that the Subject Judge made disparaging comments about another judge “on and off the record.” The transcript for the hearing that Complainant identified has been reviewed, along with all other transcripts available on the record, and no such disparaging comments appear. The allegation is thus unsubstantiated and 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.

Complainant’s remaining allegations of misconduct, when considered apart from the merits-related claims, are entirely unsubstantiated. A careful review of the record reveals no evidence of sarcasm, contempt, hostility, bullying, or the like, nor does it support Complainant’s claims of racial bias and favoritism. These claims are 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).

s/ Michael A. Chagares  
Chief Judge

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

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ORDER

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(Filed: October 10, 2023)

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)(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/ Michael A. Chagares  
Chief Judge

Dated: October 10, 2023