

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

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J.C. No. 03-16-90060

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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: December 16, 2016)

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, a licensed attorney for nearly forty years, was a defendant in an adversary proceeding before the Subject Judge. She was represented by counsel. The

Subject Judge held a bench trial in August 2016 and took the matter under advisement. Recently, the Subject Judge entered a partial judgment in favor of the plaintiff and against Complainant.

In this complaint of judicial misconduct, Complainant alleges that the Subject Judge “inexplicably treated me and my counsel in a demonstrably egregious and hostile manner throughout these proceedings.” Specifically, she alleges that the Subject Judge “completely crossed the line” during the August 2016 bench trial “when, during the course of my testimony, he accused me of being ‘on medication’” and “also implied that my counsel had somehow violated his ethical duties by filing bankruptcy.” With regard to the comment about medication, which Complainant describes as an “accusation of ‘drug use,’” Complainant alleges that the Subject Judge “clearly impl[ie]d I lacked the requisite mental capacity to know what I am or was doing when I filed the Chapter 7 petition.” Complainant claims that the Subject Judge’s “insults” demonstrate that Complainant “cannot receive a fair trial in his court.” In support of her allegations, Complainant has provided a complete transcript of the August 2016 bench trial.

Upon review, the Subject Judge’s tone throughout the proceeding reflected an appropriate degree of respect and decorum. The specifically complained-of interaction arose shortly after Complainant’s counsel questioned her about a police report and the Subject Judge ruled upon a hearsay objection from opposing counsel. The following exchange ensued:

THE COURT: . . . And – and just so we’re – are you under any medication today –

THE WITNESS: No.

THE COURT: -- that would impair your ability to understand the questions and answer – answer them truthfully?

THE WITNESS: No.

THE COURT: Okay. I Just want to make sure that we’re – we’re clear on that.

Are you – are you somehow under the impression, [Complainant’s counsel] that someone asking you not to list a debt that you acknowledge them –

[COUNSEL]: I –

THE COURT: -- to be owed is a legitimate basis –

[COUNSEL]: I – I –

THE COURT: -- not to list them?

[COUNSEL: I – I’m -- I’m required by my fee agreement to represent [Complainant] in an adversary proceeding, which this is. I did not know that she owed money to [the plaintiff] at the time that we filed her petition.

But I’m still required to represent [Complainant] as – as my fee requirement [*sic*] requires me to do, and I’m doing that, and I’m presenting the truth. Whether the truth meets with your requirements or does not meet with your requirements, it’s still the truth.

THE COURT: I will assume it is as you understand the truth to be but –

[COUNSEL: Thank you, your honor.

\* \* \*

With regard to the question about medication directed at Complainant, the Subject Judge did not “accuse” Complainant or direct an “insult” at her. The Subject Judge’s question did not express or imply that Complainant uses drugs or suffers a mental incapacity, but merely requested confirmation that Complainant was able to understand and respond to questions in a truthful manner – an appropriate subject of inquiry in a court proceeding. The comment directed at counsel reflects the Subject Judge’s concern that a court filing may not have been accurate. This, too, is a proper subject of inquiry in a court proceeding. Neither comment gives rise to an inference that misconduct has occurred.

Indeed, even if the Subject Judge had lost patience with Complainant or her counsel (which he did not), “expressions of impatience, dissatisfaction, annoyance, and even anger” arising during ordinary efforts at courtroom administration do not establish bias or partiality, unless they reveal such a high degree of antagonism or favoritism as to make fair judgment impossible. *See 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 reveals no evidence whatsoever of antagonism or favoritism, and discloses no actions on the part of the Subject Judge that could rise to the level of demonstrably egregious and hostile treatment constituting judicial misconduct under Rule 3(h)(1)(D), *Rules for Judicial-Conduct and Judicial-Disability Proceedings*.

Accordingly, Complainant's complaint of judicial misconduct will be 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*.

s/ D. Brooks Smith  
Chief Judge

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ORDER

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(Filed: December 16, 2016)

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)(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: December 16, 2016