

# The Judicial Council

FOR THE DISTRICT OF COLUMBIA CIRCUIT

**In the Matter of**

**Judicial Council Complaint No. DC-14-90022**

**A Charge of Judicial  
Misconduct or Disability**

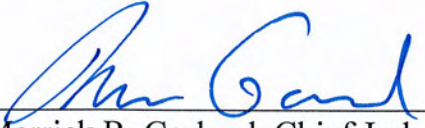
Before: GARLAND, Chief Judge

## **ORDER**

Upon consideration of the complaint herein, filed against a judge of the United States District Court for the District of Columbia, it is

**ORDERED** that the complaint be dismissed for the reasons stated in the attached Memorandum.

The Clerk is directed to send copies of this Order and accompanying Memorandum to the complainant, the subject judge, and the Judicial Conference Committee on Judicial Conduct and Disability. *See* 28 U.S.C. § 352(b); JUD. CONF. U.S., RULES FOR JUDICIAL-CONDUCT AND JUDICIAL-DISABILITY PROCEEDINGS 11(g)(2).

  
Merrick B. Garland, Chief Judge

Date: \_\_\_\_\_

9/12/14

## MEMORANDUM

The complainant alleges that a judge of the United States Bankruptcy Court for the District of Columbia engaged in conduct prejudicial to the effective and expeditious administration of the business of the courts. The allegations arise out of a Chapter 11 bankruptcy proceeding that was assigned to the subject judge. For the following reasons, the allegations do not warrant action against the judge.

An attorney filed a Chapter 11 voluntary bankruptcy petition purportedly on behalf of a debtor company owned by the complainant. The attorney subsequently filed an “application to employ,” stating that she had been retained by the debtor company, and she proceeded to file additional pleadings with the court. The judge granted the application to employ. Meanwhile, the complainant began challenging the attorney’s representation of the debtor company. The complainant ultimately filed an emergency motion seeking to set aside an order approving the sale of the debtor company. The complainant also filed a motion for sanctions against the attorney, alleging that the attorney was fraudulently representing she had been retained by the complainant and that she in fact represented one of the debtor company’s creditors and thus had a conflict of interest. Thereafter, the attorney sought to withdraw as counsel, and the subject judge granted the motion. The judge has set a hearing to address, among other issues, the complainant’s motion for sanctions against the attorney and his motion to vacate the order approving the sale of the debtor company.

The complainant alleges that the judge wrongfully allowed the case to continue while the attorney falsely claimed that she was representing the debtor company. The question of the propriety of the attorney's representation of the debtor, however, is currently pending before the judge and is the subject of an upcoming hearing. The matter is also pending before the U.S. Court of Appeals for the District of Columbia Circuit, where the complainant has filed a petition for a writ of mandamus seeking to stay the bankruptcy proceedings pending the resolution of the complainant's claim of attorney fraud. This allegation is therefore "directly related to the merits of a decision or procedural ruling" and hence cannot constitute "[c]ognizable misconduct" under the Judicial-Conduct Rules. JUD. CONF. U.S., RULES FOR JUDICIAL-CONDUCT AND JUDICIAL-DISABILITY PROCEEDINGS 3(h)(3)(A); *see* JUDICIAL-CONDUCT RULE 11(c)(1)(B) (requiring dismissal of a complaint that is "directly related to the merits of a decision").

The complainant also alleges that, "[b]y turning a blind eye to [an] illegal Chapter 11 Petition that was filed without the authorization of [the debtor, the subject judge's] actions could be interpreted as judicial harassment, prejudice and/or bias." But the judge has not turned a blind eye to questions surrounding the debtor's representation; instead, he has scheduled a hearing to address the issue. Nor is the judge "neglectfully allow[ing the attorney] to violate" the law. Rather, the ongoing investigation into the matter demonstrates that the judge is directly addressing it. Accordingly, the complaint is based on allegations "lacking sufficient evidence to raise an inference that misconduct has

occurred” and “must be dismissed.” JUDICIAL-CONDUCT RULES 11(c)(1)(D); *see* 28 U.S.C. § 352(b)(1)(A)(iii).<sup>1</sup>

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<sup>1</sup> Pursuant to 28 U.S.C. § 352(c) and JUD. CONF. U.S., RULES FOR JUDICIAL-CONDUCT AND JUDICIAL -DISABILITY PROCEEDINGS 18(a), the complainant may file a petition for review by the Judicial Council for the District of Columbia Circuit. Any petition must be filed in the Office of the Clerk of the Court of Appeals within 35 days of the date of the Clerk's letter transmitting the dismissal Order and this Memorandum. *Id.* R. 18(b).