

FILED
U.S. COURT OF APPEALS
ELEVENTH CIRCUIT
JAN 27 2016
Amy C. Nerenberg
Acting Clerk of Court

CONFIDENTIAL
BEFORE THE CHIEF JUDGE
OF THE ELEVENTH JUDICIAL CIRCUIT

Judicial Complaint No. 11-15-90100

IN THE MATTER OF A COMPLAINT FILED BY _____

IN RE: The Complaint of _____ against _____, U.S. Bankruptcy Judge for the U.S. Bankruptcy Court for the _____ District of _____, under the Judicial Conduct and Disability Act of 1980, Chapter 16 of Title 28 U.S.C. §§ 351-364.

ORDER

_____ (“Complainant”) has filed this Complaint against United States Bankruptcy Judge _____ (the “Subject Judge”), pursuant to Chapter 16 of Title 28 U.S.C. § 351(a) and the Rules for Judicial-Conduct and Judicial-Disability Proceedings of the Judicial Conference of the United States (“JCDR”).

Background

In his Complaint of Judicial Misconduct or Disability against his _____, Judge _____, _____ checked the box indicating that his Complaint “concern[ed] a particular lawsuit,” and he listed a state court lawsuit in which he was a party. _____ submitted transcripts along with his Complaint, which show that the lawsuit referred to in the Complaint was filed by _____, _____, who is the Subject Judge’s _____. The transcripts list _____ as a defendant in the lawsuit and show that proceedings were conducted in _____ state court with Judge _____ presiding. The transcripts also show that the plaintiff was represented by _____, _____ was represented by _____, and the underlying dispute between _____ and _____ involved ownership of certain real property, a house divided into apartments. It was a bitter dispute.

Limited Inquiry under JCDR 11(b)

Rule 11(a) requires the Chief Judge to review complaints of judicial misconduct and determine what action should be taken on them. See JCDR 11(a). Rule 11(b) provides that: “In determining what action to take under Rule 11(a), the chief judge may conduct a limited inquiry.” JCDR 11(b); see also 28 U.S.C. § 352(a) (providing that “[t]he chief judge . . . may also communicate orally or in writing with . . . any other person who may have knowledge of the matter, and may review any transcripts or other

relevant documents”). In conducting that inquiry, the Chief Judge “must not determine any reasonably disputed issue.” JCDR 11(b). Dismissal of the complaint is appropriate, however, “when a limited inquiry . . . demonstrates that the allegations in the complaint lack any factual foundation or are conclusively refuted by objective evidence.” 28 U.S.C. § 352(b)(1)(B).

The commentary on Rule 11(b) explains what constitutes a “reasonably disputed issue”:

[A] matter is not “reasonably” in dispute if a limited inquiry shows that the allegations do not constitute misconduct or disability, that they lack any reliable factual foundation, or that they are conclusively refuted by objective evidence.

In conducting a limited inquiry under subsection (b), the chief judge must avoid determinations of reasonably disputed issues, including reasonably disputed issues as to whether the facts alleged constitute misconduct or disability, which are ordinarily left to the judicial council and its special committee. An allegation of fact is ordinarily not “refuted” simply because the subject judge denies it. The limited inquiry must reveal something more in the way of refutation before it is appropriate to dismiss a complaint that is otherwise cognizable. If it is the complainant’s word against the subject judge’s—in other words, there is simply no other significant evidence of what happened or of the complainant’s unreliability—then there must be a special-committee investigation. Such a credibility issue is a matter “reasonably in dispute” within the meaning of the Act.

However, dismissal following a limited inquiry may occur when a complaint refers to transcripts or to witnesses and the chief judge determines that the transcripts and witnesses all support the subject judge. Breyer Committee Report, 239 F.R.D. at 243. For example, consider a complaint alleging that the subject judge said X, and the complaint mentions, or it is independently clear, that five people may have heard what the judge said. *Id.* The chief judge is told by the subject judge and one witness that the judge did not say X, and the chief judge dismisses the complaint without questioning the other four possible witnesses. *Id.* In this example, the matter remains reasonably in dispute. If all five witnesses say the subject judge did not say X, dismissal is appropriate, but if potential witnesses who are reasonably accessible have not been questioned, then the matter remains reasonably in dispute. *Id.*

JCDR 11 cmt. The commentary also instructs that “if it is clear that the conduct or disability alleged, even if true, is not cognizable under these Rules, the complaint should be dismissed.” Id.

Complaint

In _____ Complaint of Judicial Misconduct or Disability, he alleges what he describes as “three main areas of misconduct by [his] _____,” the Subject Judge. This Order will describe the allegations regarding each of these three “areas” in turn and will address them based on a limited inquiry conducted under Rule 11(b).

I.

Family Disagreement Arising from a _____ School Recommendation

The first area of misconduct that _____ alleges against the Subject Judge stems from a favor that _____ and his _____ (_____) _____, who is the Subject Judge’s _____, asked him to do for _____ who was trying to get into _____ school.

_____ attached to his Complaint a printed copy of an email from the Subject Judge to _____. In the email the Subject Judge recounts that _____ and his _____ had asked him if he knew anyone “who had any pull at _____.” It also says that _____ had told the Subject Judge that he was going to be meeting with someone in the administration at the school on a given day. The email mentions a conversation that the Subject Judge had with his “old friend” who was “on the Board of the _____ school” and who had told the Subject Judge that he would call the administrative offices to see if he could help _____. The friend later phoned the Subject Judge and told him that _____ had “no appointments” with school administration and that he would “try to push [_____] up the wait list, but he was not overly optimistic due to [_____] GPA.”

That email to _____ states that the Subject Judge had texted _____ “telling him I did not appreciate the misrepresentation about the meeting [with school administration] because it had embarrassed” him. The email also states that since then, _____ “has been a complete jerk to [_____] who has nothing to do with this.” The email closed:

If your _____ has a beef, it is with me, not _____. Yet he hasn’t been man enough to call me about it. I have not told my friend about the way your _____ has acted toward _____ and do not intend to out of _____ loyalty to you. However, if you[r] _____ says one more nasty thing to _____, I will tell my

friend to pull his support. Talk about no good deed goes unpunished and making a mountain out of a mole hill. This is it!

_____ summarizes these events as follows: The Subject Judge “provided an initial positive recommendation, and then threatened to pull that support, to my _____ detriment, if I did not abide by his threat concerning my communications with _____ (my _____, [the Subject Judge’s] _____).” According to _____, those actions “drove [_____] _____ into a deep depressed state of mind and strained his mental status during the most important decision of his life,” and his _____ “was terrified as to exactly what [the Subject Judge] would do or say unless his threats were acquiesced.” _____ contends that: “When a Federal Judge, no less the _____ of the _____ Court, threatens to withdraw support that he claims to have given, common sense would inform anyone that a major ethical violation has been committed.”

Rule 3(h)(1)(A) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings of the Judicial Conference of the United States provides that cognizable misconduct includes “using the judge’s office to obtain special treatment for friends or relatives.” In the Guide to Judiciary Policy’s published ethics opinions, Advisory Opinion No. 73, “Providing Letters of Recommendation and Similar Endorsements,” states that when responding to any type of request for a recommendation or endorsement, a “judge should carefully consider whether the recommendation or endorsement might reasonably be perceived as exerting pressure by reason of the judicial office, and should avoid any action that could be so understood.” Guide to Judiciary Policy, Vol. 2B, Ch. 2, Advisory Opinion No. 73 at 2. The opinion also states:

It must be recognized, however, that judges are members of society, and of the community at large, and that not every action of a judge is intended, or could reasonably be perceived, as an assertion of the prestige of judicial office. When a judge is personally aware of facts or circumstances that would facilitate an accurate assessment of the individual under consideration, a judge may properly communicate that knowledge, and his or her opinions based thereon, to those responsible for making decisions concerning the applicant.

Id. at 1. The allegations in the Complaint about the recommendation or non-recommendation of _____ for _____ school admission, even if true, do not constitute misconduct. See JCDR 11(c)(1)(A).

The allegations do not indicate that the Subject Judge used his judicial office to obtain special treatment for his _____, “exert[ed] pressure by reason of the judicial office,” or took “any action that could be so understood.” The Complaint makes conclusory allegations that the Subject Judge was acting in his capacity as a judge in

making a recommendation and then in withdrawing it, but the only evidence presented is the email that refers to the Subject Judge communicating with his “old friend” who was “on the Board of the _____ school.” There is no evidence that the alleged actions of the Subject Judge were “intended, or could reasonably be perceived, as an assertion of the prestige of judicial office” instead of a request from an old friend. The Subject Judge did not use his position as a judge either to promote or to impede his _____ application to _____ school. And the Subject Judge’s threat to “tell my friend to pull his support,” such as it was, reflects a family dispute about what would be communicated to an old friend of the judge’s and was not an exercise, or threat to exercise, judicial power or authority.

For these reasons, the assertions in the Complaint about the efforts of _____ and his _____ to get the _____ into _____ school and the Subject Judge’s involvement in those efforts are “based on allegations lacking sufficient evidence to raise an inference that misconduct has occurred,” JCDR 11(c)(1)(D), and this part of the Complaint is due to be dismissed under 28 U.S.C. § 352(b)(1)(A)(iii), Rule 11(c)(1)(D), and Rule 11(c)(1)(A).

II.

The Lawsuit between _____ and his _____

The second of the three alleged “areas of misconduct” that _____ asserts in his Complaint involves what he describes as “a number of actions” in a “lawsuit concerning [the Subject Judge’s] _____ and her _____” as to which of them owned a house that had been divided into apartments, which was a valuable piece of property. _____ general allegations are that the Subject Judge “consistently forced himself into the proceedings, interrupting the legal actions, used bullying tactics if he did not like what was going on in court, gave legal instructions to his _____ attorney thereby acting as an attorney, frequently interrupted the presiding Judge _____, and continually advocated for his _____.” _____ also alleges that the Subject Judge “repeatedly used his judicial standing in an attempt to influence and intimidate presiding Judge _____, witness _____, myself, and my attorney _____.” The specific improper conduct that _____ alleges occurred is discussed below.

A.

Conduct During an In-Chambers Hearing and a Comment about Calling the Marshals

_____ claims that the Subject Judge attempted to “humiliate and eviscerate [_____] credibility in front of Judge _____” during an in-chambers hearing. Specifically, the Complaint alleges that:

After a hearing in the private chambers of Judge _____, in the presence of Judge _____, his bailiff and my attorney, [the Subject Judge] began shouting at my attorney _____, pointing his finger in his face while making menacing gestures. I immediately moved between them and told [the Subject Judge] to stop threatening my attorney, he then pointed his finger at me and shouted "I should call the Marshalls [sic] and have you arrested." His angry words and threatening gestures in front of my attorney, Judge _____, his bailiff, was intended to totally humiliate and eviscerate my credibility in front of Judge _____. His actions were so debasing, that Judge _____ ordered us to take separate elevators to exit the courthouse.

In conducting the limited inquiry into these allegations, I interviewed every person _____ alleges was present at this in-chambers hearing: Judge _____, his bailiff (Officer _____), _____ attorney (_____), and the Subject Judge. I also interviewed _____ attorney (_____), because the conduct allegedly occurred during an in-chambers hearing, making it likely that _____ would have been present at that hearing along with the other people listed in the Complaint. Not one of those five witnesses recalls the alleged incident in Judge _____ chambers and in his presence as _____ describes it in his Complaint. It is _____ word against the word of five others.

Rule 11(b) provides that in a limited inquiry, such as this one, the Chief Judge "must not determine any reasonably disputed issue" (emphasis added), but the commentary explains that allegations that "lack any reliable factual foundation" are not reasonably disputed. JCDR 11 cmt. While the Subject Judge's denial of a fact that the complainant says he witnessed ordinarily is not enough to remove a reasonable dispute about the matter, the commentary provides a telling example of what is enough. It states that if the complaint mentions or it is clear that if what the complainant says happened would have been witnessed by five other people, and all five of them say it did not happen, there is no reasonable dispute and the complaint may be dismissed. JCDR 11 cmt. That is what happened here. Five witnesses other than _____ would have witnessed what he says happened in Judge _____ chambers, if it did happen, and it is not something they would have forgotten. Yet none of them recalls the events in Judge _____ chambers that that _____ alleges occurred there.

There is another reason that it is not reasonably disputed that the matter that _____ says happened in front of Judge _____ did not. In discussing whether a matter should be considered to be reasonably in dispute, the commentary to Rule 11(b) indicates that "significant evidence" of "the complainant's unreliability" can and should be considered. There is abundant evidence of _____ unreliability as a witness in the form of multiple convictions for federal crimes involving moral turpitude.

Federal court records show that in a 1991 indictment, _____ was charged with 41 counts of bribery, money laundering, filing false tax returns and other crimes. He was convicted of one count of bribery in violation of 18 U.S.C. § 666(a)(1)(B) and was sentenced to 41 months imprisonment. He later pleaded guilty to another count of bribery in violation of 18 U.S.C. § 666(a)(1)(B), money laundering in violation of 18 U.S.C. § 1956(a)(1)(B)(i), and false statements in violation of 26 U.S.C. § 7206. For those crimes, he was sentenced to 63 months imprisonment for the bribery and money laundering convictions and 36 months for the false statements crime which were to run concurrently, and that total 63-month sentence was to run concurrently with his 41-month sentence on the earlier conviction. A separate information charged him with obstructing justice in his criminal case by “causing a grand juror to make unauthorized disclosures of matters” before the grand jury and “causing the alteration and falsification of documents subpoenaed” by the grand jury. He pleaded guilty to that charge and was sentenced to 60 months imprisonment to run concurrently with his other sentences. Approximately seven months after that judgment issued, the government filed a motion to reduce _____ sentence based on his assistance to the government, and the court later granted that motion, reducing his sentence to time served and leaving unchanged all of the other terms and conditions of the earlier judgments against _____.

For all of these reasons, there is no reasonable dispute that this incident, which the Complaint alleges occurred in Judge _____ chambers or in his presence, did not occur in his chambers or in his presence. As a result, even if the other factual assertions about this incident are presumed true, the alleged exchange between the Subject Judge and _____ could not possibly have “humiliate[d] and eviscerate[d] [_____] credibility in front of Judge _____.”

That said, the limited inquiry has revealed that the Subject Judge did make a comment to _____ about calling the marshals. The Subject Judge and _____ both recall the comment, but they both recall that it was made during one of the mediation sessions that the Subject Judge attended with his _____. The limited inquiry has also revealed that none of the mediators heard the comment. There were four mediators who conducted five mediation sessions. (One mediator conducted two sessions.) Interviews with every one of the mediators establish that not one of the four of them recalls hearing any comment about calling the marshals, and they say that they would have recalled such a comment if it had been made in their presence. There can be no reasonable dispute about this point: the Subject Judge’s comment about the marshals could not possibly have influenced any of the actions of any of the mediators because none of them heard it.

Not only that, but the comment apparently was made in response to a perceived physical threat from _____, and a federal judge’s statement that he would call the marshals in response to a perceived physical threat is not misconduct. Under these circumstances, about which there can be no reasonable dispute, the comment did not constitute the improper use of judicial authority, and it did not have any improper

influence on the state court lawsuit between _____ and his _____. If there was loud shouting and threatening finger-pointing that occurred between _____ and the Subject Judge during the litigation, it occurred outside of the presence of Judge _____ and outside of the presence of any of mediators.¹

In summary, the Complaint's claims about any of the Subject Judge's conduct that occurred during an in-chambers hearing with Judge _____ are "based on allegations lacking sufficient evidence to raise an inference that misconduct has occurred," JCDR 11(c)(1)(D), and this part of the Complaint is due to be dismissed under 28 U.S.C. § 352(b)(1)(A)(iii) and Rule 11(c)(1)(D). And the statement the Subject Judge made elsewhere about calling the marshals does not amount to misconduct. See JCDR 11(c)(1)(A).

B.

Actions and Comments in Open Court and "Advocating" at Mediation Sessions

In recounting the alleged misconduct that occurred during the state court litigation between _____ and her _____, the Complaint also points to the Subject Judge's actions and comments in open court, where Judge _____ was presiding, and asserts that the Subject Judge was "advocat[ing]" for his _____ at mediation sessions. _____ alleges that the Subject Judge "made sure" that everyone in the courtroom and the court reporter knew who he was. He also asserts that the Subject Judge "insisted on attending" five mediation sessions "where he was clearly not a party or witness in the case, and was acting as an advocate for his _____." The gist of the allegations regarding the Subject Judge's conduct in the courtroom and at mediation sessions is that he acted as an advocate for his _____ and attempted to use his position as a judge to influence the proceedings.

Canon 4A(5) of the Code of Conduct for United States Judges states, "A judge should not practice law and should not serve as a family member's lawyer in any forum. A judge may, however, act pro se and may, without compensation, give legal advice to and draft or review documents for a member of the judge's family." Guide, Vol. 2A, Ch. 2, Canon 4A(5). The commentary to Canon 4A(5) provides, "A judge may act pro se in all legal matters, including matters involving litigation and matters involving appearances

¹ The lawyers who were interviewed in this limited inquiry recall certain occasions during the litigation between _____ and his _____ when tempers flared and voices were raised in this heated family dispute. There were incidents in which _____ taunted the Subject Judge and called him derogatory names, and there were angry words on the Subject Judge's part, although no witness who was interviewed recalls the Subject Judge physically threatening _____ (whom one witness describes as more physically imposing than the Subject Judge). There can be no reasonable dispute that the Subject Judge's actions did not constitute misconduct. See JCDR 11(c)(1)(D).

before or other dealings with governmental bodies. In so doing, a judge must not abuse the prestige of office to advance the interests of the judge or the judge's family." Id. Canon 4A(5) cmt.

i. Open Court

The Complaint asserts that at a June 25, 2013 hearing, the Subject Judge "interrupted" the hearing and _____ attorney _____ "felt compelled" to state that he had a problem with the Subject Judge addressing the court. The hearing included a discussion about rescheduling the Subject Judge's deposition which had been cancelled the business day before it was to have occurred, inconveniencing the Subject Judge. Attached to the Complaint is an excerpt from that hearing, which shows the following exchange:

MR. _____: And Your Honor, I have another issue.

MR. _____: And Your Honor, I have a real problem with Judge _____ addressing this Court.

MR. _____: I'm talking about my own issues.

MR. _____: May I finish? I have a problem with this, Judge. This is now becoming a pattern, that Judge _____ comes to a hearing and has something to say. He is not a party to this case. He is not an attorney in this case. He is not relevant to these proceedings.

To have him come in and inject his thoughts and his disagreements with how things are progressing, I really have an issue. The first couple of times, you know, I kept my mouth shut, but now it's every hearing.

After that, the transcript shows that _____ attorney, _____, stated: "Then, Your Honor, I'll raise the issue." _____ went on to discuss the issue of _____ request for additional discovery, and then _____ discussed issues related to scheduling the Subject Judge's deposition. There was a lengthy discussion on that topic, _____ stated that "[t]his is mudslinging," and the Subject Judge responded that _____ cancellation of his deposition the business day before it was to occur was "nothing but harassment." He went on to say: "[T]he reason I stood up, if there is a discovery extension, don't include me. I've given [_____] two dates. They've chosen not to take my deposition." To which Judge _____ replied: "He just said that's not going to happen. He just said it on the record."

It is obvious from the transcript that the Subject Judge was not attempting to use his status as a judge to influence the presiding judge or the proceedings. Instead, the transcript reflects a discovery scheduling dispute between the parties in the case, which directly involved the Subject Judge because he was to be the deponent. The transcript shows that Judge _____ resolved the issue by pointing out that it actually was not an issue since _____ had stated on the record that he did not plan to try to reschedule the deposition or take it at a later date.

That is all there was to the matter, and there can be no reasonable dispute that the Subject Judge's comments to the court about the rescheduling of his deposition were not an attempt to act as an advocate for his _____ or to use his position as a judge to influence the proceedings. Instead, the transcript plainly shows that the Subject Judge was concerned about, and spoke to the court about, one issue — the rescheduling of his own deposition. The Complaint's assertions about the Subject Judge's conduct during the June 25, 2013 hearing are "based on allegations lacking sufficient evidence to raise an inference that misconduct has occurred," JCDR 11(c)(1)(D), and this part of the Complaint is due to be dismissed under 28 U.S.C. § 352(b)(1)(A)(iii) and Rule 11(c)(1)(D).

The Complaint also refers to statements the Subject Judge made at other hearings, contending that they show that the Subject Judge went "far beyond being a supportive _____." Attached to the Complaint is an excerpt of the transcript of a December 5, 2013 state court hearing. The transcript shows that "Mr. _____" asked Judge _____ these two questions in open court on the subject of tax returns: (1) "We are talking about the 2012 tax returns, and they will be returned when you are done?" and (2) "We can redact the page, but what are you going to do with the redacted page[?]" Judge _____ replied that he had to look and see what the issue was, and if he found that there was no issue, "[w]e will discuss it then." After that, the hearing was concluded. The Subject Judge's two questions in no way indicate that he was trying to use his position as a judge to influence the presiding judge or the proceedings. Instead, the transcript plainly shows that there was a matter involved in the proceedings that may have concerned the Subject Judge personally (tax returns, presumably involving sensitive financial information), and he simply asked two legitimate questions about that.

Another, undated transcript excerpt attached to the Complaint shows that the Subject Judge asked: "Your Honor, what about the rents he's collecting Wednesday?" The transcript shows that Judge _____ simply ignored that question and instead spoke directly to the attorneys, _____ and _____, about matters pertaining to a hearing on a motion. The transcript establishes beyond any reasonable dispute that Judge _____ was in control and running his courtroom regardless of what questions or comments were interjected by anyone else in the courtroom. Shortly after that point in the transcript, Judge _____ asked: "Okay. So how much? What do we need to set

aside as far as time is concerned.” The Subject Judge responded, “The other issue can take time, Your Honor, to work that out.” That comment, like the earlier question, was simply ignored by the court. _____ asked for an hour-and-a-half and _____ asked for two hours. At that point the Subject Judge said, presumably to _____, “_____, don’t limit yourself.” Not responding to that comment either, Judge _____ set the time for the next hearing and the hearing that was being conducted was concluded. While the Subject Judge’s questions and comments during this hearing might have been unnecessary, they do not, as the Complaint alleges, reflect any attempt on the Subject Judge’s part to use his position as a judge to influence the proceedings. The most that can be said is that the Subject Judge directed some unsolicited comments to his _____ lawyer. That does not constitute judicial misconduct.

As for the allegation that the Subject Judge made sure everyone in the courtroom and the court reporter knew who he was, that information would have eventually come to light in the course of the proceedings anyway. _____ attorney _____ called the Subject Judge as a witness at a hearing on his motion to disqualify _____ attorney _____ and referred to him as “Judge _____.” Because the Subject Judge was a testifying witness, everyone in the courtroom would have known who he was.

ii. Mediation Sessions

About the Subject Judge’s attendance at the mediation sessions, none of the interviewed witnesses who were present at the mediation sessions indicated that the Subject Judge did anything more than appear as a supportive _____. A judge’s status as a judge does not prohibit him from attending mediation sessions with his _____ when she is a party to a lawsuit. It would have been inefficient for the Subject Judge not to have been present at the mediation sessions because his _____ almost certainly would have wanted to discuss with him any settlement offers and other matters that came up during those sessions. Every one of the four mediators recalls Judge _____ being present at the mediation sessions, and not one of them recalls his engaging in any improper conduct or attempting to use his position as a judge to influence the proceedings.

iii. Conclusion

The Complaint’s assertions about the Subject Judge’s actions and comments in open court and at mediation sessions involving his _____ lawsuit are “based on allegations lacking sufficient evidence to raise an inference that misconduct has occurred,” JCDR 11(c)(1)(D), and this part of the Complaint is due to be dismissed under 28 U.S.C. § 352(b)(1)(A)(iii), and Rule 11(c)(1)(D).

III.

Other Events Related to the Lawsuit between _____ and his _____

_____ describes the “third area[] of misconduct” as “a combination of actions by [the Subject Judge] that show a gross disrespect for the judicial office,” including “accompanying and interceding with bank officials; illegally posting eviction notices; appearing and attempting to bully and intimidate witnesses in a menacing manner, to the point the police had to be called for trespass and harassment.”

A.

The Incident with a Tenant

_____ alleges that the Subject Judge and his _____ came to the house (the ownership of which was at issue in the ongoing lawsuit between _____ and his _____) “to post an illegal eviction notice” on his door. The house had been divided into apartments. The Complaint asserts:

While his _____ was at the door with the tenant (Ms. _____), [the Subject Judge] was standing in [the] background yelling instructions to [his _____] to demand a copy of the lease and all future rental payments. Ms. _____ knew he was a Federal Judge and felt the intimidation to the degree that she felt compelled to make a formal complaint to the _____ Police Department and signed a sworn affidavit.

The Complaint characterizes this as “illegally posting eviction notices; appearing and attempting to bully and intimidate witnesses in a menacing manner, to the point the police had to be called for trespass and harassment.”

In the course of the limited inquiry into these allegations, the tenant whom the Complaint refers to as Ms. _____ was interviewed, and the documents mentioned in the Complaint were requested. She fully cooperated in the interview and submitted the police report, the sworn affidavit, and copies of certain email correspondence that she had with _____.²

² The email exchanges were about the payment of rent on _____ apartment and whether _____ or her _____ was entitled to receive those payments. The only mention of the Subject Judge in those emails is in an April 2, 2013 email from _____ where she writes: “You should also be aware that after you and your _____ tried to illegally enter the property, I called _____ Police and filed an incident report. If you or your _____, attempt to come on to the property again without proof of ownership or continue to harass me with threats of eviction and further trespass, I will contact the police.” The police “incident report” does not even suggest that the Subject Judge “tried to illegally enter” Ms.

The police report referred to in the Complaint is a "Case Report" from the _____ Police. It describes the "Incident Type" simply as "Incident" and lists the time and date of it as "03/16/2013 19:00." In that report the "Complainant – Reporting Person" is listed as _____. The "Narrative" at the end of the report states that at the "above date and time" a police officer came to the residence and spoke with _____. He also spoke to _____, who told him that he and _____ were "currently in a property dispute over ownership of the home." The report states that _____ was concerned that _____ "wanted to enter her apartment without permission" and was "attempting to enter her apartment or trying the door knob." The report states that there was "no evidence of forced entry." The report does not mention the Subject Judge at all.

The affidavit from _____ (which was never submitted to the police) that is mentioned in _____ Complaint is dated March 18, 2013, and states that on March 16, 2013, _____ appeared at _____ door unannounced and tried to open her front door, turning the knob and pushing the door. _____ answered the door, and _____ gave her a piece of paper, told her she owned the home, and instructed her to pay all future rent payments to her. The affidavit states: "There was a man standing several feet from my door whom I recognized as _____ from the Facebook photographs." _____ asked for the details of the rental agreement, and "[h]er _____ then told _____ to ask me about the lease." _____ attested that she filed a police report because she "felt that _____ and her _____ actions were an intrusion of [her] privacy and an unauthorized trespassing."

The police report does not mention the Subject Judge but merely describes an "incident" in which his _____ was involved. It is undisputed that during the incident the Subject Judge did not approach _____ but instead stood, as the Complaint says, "in the background." Nor did the Subject Judge ever speak directly to _____. While the Complaint alleges that the Subject Judge "yell[ed] instructions" to his _____, _____ sworn affidavit states that he "told _____ to ask me about the lease." The affidavit does not mention yelling.³

_____ apartment. Indeed, the report does not even mention the Subject Judge, and it is undisputed that the Subject Judge was some distance away in the background when _____ was at _____ apartment door.

³ _____ current recollection is that the Subject Judge "bark[ed] orders" to his _____, but her sworn statements in the affidavit two days after the incident occurred used the word "told" and did not mention yelling or shouting. Even in light of the current recollection that "orders" were "barked," there can be no reasonable dispute that the Subject Judge was acting in his capacity as a _____ — not as a judge — and was standing in the background when his

The Subject Judge's conduct during this incident does not present any reasonably disputed issue. It is obvious that he was present to support and advise his _____. None of the Subject Judge's actions suggests that he attempted to use his position as a judge in any improper way. Although _____ knew who the Subject Judge was, he did not identify himself to her or speak to her.

_____ found the incident unsettling, but the record shows beyond any reasonable dispute that the Subject Judge did not engage in misconduct. The assertions in the Complaint related to the Subject Judge's conduct during the incident with _____ and the posting of an eviction notice on _____ door are "based on allegations lacking sufficient evidence to raise an inference that misconduct has occurred," JCDR 11(c)(1)(D), and this part of the Complaint is due to be dismissed under 28 U.S.C. § 352(b)(1)(A)(iii) and Rule 11(c)(1)(D).

B.

The Incident with an Unnamed "Bank Official" and _____ Withdrawal of Money from an Unidentified Bank Account

The Complaint alleges that the Subject Judge accompanied his _____ to a bank where she made an "unauthorized withdrawal . . . moments after leaving Judge _____ courtroom, knowing full well doing so was a defacto violation of lawsuit decorum," and the Subject Judge "us[ed] his status to intimidate a bank official to do something that should not have been done." According to the Complaint, the Subject Judge "was doing much more than merely supporting his _____. He was an active participant in this improper activity."

The conclusory assertions in the Complaint about a "defacto violation of lawsuit decorum" and the vague reference to events at a bank with an unnamed bank official are "based on allegations lacking sufficient evidence to raise an inference that misconduct has occurred," JCDR 11(c)(1)(D), and this part of the Complaint is due to be dismissed under 28 U.S.C. § 352(b)(1)(A)(iii) and Rule 11(c)(1)(D).

IV.

The Complaint is **DISMISSED** because a limited inquiry has "demonstrate[d] that the allegations in the complaint lack any factual foundation or are conclusively refuted by objective evidence." 28 U.S.C. § 352(b)(1)(B).

_____ was at _____ apartment door. Nothing in the alleged facts indicates that the Subject Judge used or attempted to use his position as a judge in any improper manner.

A handwritten signature in black ink, appearing to read "E. Lamer". The signature is written in a cursive style with a prominent initial "E" and a long horizontal stroke at the end.

Chief Judge