

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

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J.C. No. 03-13-90011

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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: May 9, 2013)

PRESENT: McKEE, 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.<sup>1</sup>

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

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<sup>1</sup> Complainant alleges wrongdoing by bankruptcy trustees and other individuals and entities. A judicial misconduct proceeding is not the appropriate forum for raising allegations concerning actions by individuals not covered by the Judicial Conduct and Disability Act. Accordingly, such allegations will not be addressed in this opinion. See 28 U.S.C. §§ 351, 352(b)(1)(A)(i); Rule 4, Rules for Judicial-Conduct and Judicial-Disability Proceedings.

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 and a number of corporate entities in which Complainant once owned stock are bankruptcy debtors in related cases before the Subject Judge. In December 2012, Complainant's counsel filed an appeal to District Court from a final order in one of the bankruptcy matters, pursuant to 28 U.S.C. § 158. Briefing is complete and the appeal remains pending. Complainant filed this judicial misconduct complaint in February 2013. Shortly thereafter, the Subject Judge submitted a response to the allegations of the complaint.

According to the complaint, the Subject Judge's "misconduct is on several fronts, all pertaining to [his] initial ruling that no non-debtor assets can be sold in a § 363 Bankruptcy sale and permitting the sale to proceed without any schedules of the debtors being filed." Specifically, Complainant alleges that the Subject Judge erroneously permitted a sale that included Complainant's shares of stock in several corporations that had not declared bankruptcy. Complainant further alleges that this initial error was compounded because, as a result of the sale of the non-debtor company stock, Complainant was prevented from accessing business records held by those entities, and was therefore unable to meet filing requirements in the bankruptcy proceedings. According to Complainant, "[i]t goes without saying that the Judge's misconduct of permitting [the purchaser of the stock] to maintain possession of what is not theirs has

caused insurmountable damages to both the IRS, the state tax agencies, the unsecured creditors, the non-debtor companies, and myself. . . .”

Clearly, the complaint reflects Complainant’s fundamental disagreement with the merits of the Subject Judge’s decisions and rulings. “An allegation that calls into question the correctness of a judge’s ruling, including a failure to recuse, without more, is merits-related.” Rule 3(h)(3)(A), Rules for Judicial-Conduct and Judicial-Disability Proceedings. Merits-related allegations are not cognizable as judicial misconduct. Id.

Indeed, Complainant has presented the majority of the allegations in this misconduct complaint as grounds for his appeal to the District Court. Complainant’s merits-related allegations will be addressed in the course of that appeal, and any judgment ultimately reached by the District Court will not be subject to collateral challenge here. The “misconduct procedure [under the 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). Accordingly, Complainant’s merits-related allegations are dismissed. See 28 U.S.C. § 352(b)(1)(A)(ii); Rules 3(h)(3)(A), 11(c)(1)(B), Rules for Judicial-Conduct and Judicial-Disability Proceedings.

In Complainant’s only non-merits-related claim, he alleges that the Subject Judge “pushed the [stock] sale agreement ahead without schedules or any due diligence so the

Trustee . . . could receive her \$125,000.00 fee from the sale proceeds prior to her becoming a judge.”<sup>2</sup> Complainant thus vaguely implies that the Subject Judge acted with an improper motive, allegedly rushing the sale so as to financially benefit the trustee.

The record refutes Complainant’s claim. In the bankruptcy proceeding, the trustee filed a written motion proposing the sale, and the Subject Judge, with ample notice to the parties, scheduled a hearing on the motion. Complainant’s counsel attended the hearing and did not raise an objection to the timing of the sale or any concerns about the propriety of the sale. The trustee later filed written applications for compensation. Again, Complainant and his counsel did not object. There is no indication whatsoever that the Subject Judge acted improvidently or with an improper motive. Complainant’s allegations are frivolous and unsupported by evidence that would raise an inference that misconduct occurred. They are therefore dismissed. See 28 U.S.C. § 352(b)(1)(A)(iii); Rule 11(c)(1)(C), (D), Rules for Judicial-Conduct and Judicial-Disability Proceedings.

For the foregoing reasons, the complaint is dismissed pursuant to 28 U.S.C. §§ 352(b)(1)(A)(i), (ii), and (iii).

      /s/ Theodore A. McKee  
Chief Judge

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<sup>2</sup> In the course of Complainant’s bankruptcy proceeding, the first trustee became a bankruptcy judge and was replaced by a second trustee.

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ORDER

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(Filed: May 9, 2013)

PRESENT: McKEE, 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 of the Court of Appeals within **35 days** of the date on the letter informing the parties of the Chief Judge's order.

18(b) Form. The petition should be in letter form, addressed to the Circuit Executive of the Court of Appeals, 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 of the Court of Appeals for the Third Circuit and on the Court of Appeals’ internet site, [www.ca3.uscourts.gov](http://www.ca3.uscourts.gov).

/s/ Theodore A. McKee  
Chief Judge

Dated: May 9, 2013