

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. No. 03-13-90013

IN RE: COMPLAINT OF JUDICIAL MISCONDUCT
OR DISABILITY

ORIGINAL PROCEEDINGS UNDER 28 U.S.C. § 351

MEMORANDUM OPINION

(Filed: May 13, 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.

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 was a pro se defendant in an adversary action filed by a Chapter 11 bankruptcy debtor. In that proceeding, the debtor sought an *ex parte* temporary

restraining order to prevent Complainant from disclosing certain confidential information, which the debtor alleged was likely to interfere with an upcoming sale of the debtor to another entity. The Subject Judge granted the *ex parte* motion, entered a temporary restraining order, and scheduled a hearing on the debtor's motion for a preliminary injunction. Shortly thereafter, the debtor filed an emergency motion alleging that the Complainant was in contempt of the temporary restraining order. After a hearing, the Subject Judge granted the motion and directed that Complainant pay a substantial monetary penalty for every future violation. The adversary proceeding subsequently settled. No hearing on the preliminary injunction took place and no monetary penalties were imposed upon Complainant.

Complainant filed this judicial misconduct complaint shortly after the adversary proceeding settled. In it, he contends that the purpose of the adversary proceeding was “to simply postpone disclosure of the negligent management of [the debtor] until after the [sale] was completed,” and was therefore part of a “cover up” of the debtor's bad business practices. To the extent these allegations concern actions by the debtor and its counsel, this judicial misconduct proceeding is not a proper forum for considering their merits. Because the debtor and its counsel are not covered by the Judicial Conduct and Disability Act, these 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.

With respect to the Subject Judge, Complainant claims the contempt order was unfair, as he alleges it was based upon actions he took before he was “properly served” with the temporary restraining order.¹ Complainant further alleges the temporary restraining order was “a gag order on me,” and that the Subject Judge “threatened to hit me with [a penalty] for every violation of the TRO. . . .,” implying that both the temporary restraining order and the contempt order were improper.

Clearly, Complainant disagrees with the Subject Judge’s orders. “An allegation that calls into question the correctness of a judge’s ruling . . . without more, is merits-related.” Rule 3(h)(3)(A), Rules for Judicial-Conduct and Judicial-Disability Proceedings. Merits-related allegations are not cognizable judicial misconduct. Id. 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). Complainant’s merits-related allegations are therefore 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.

¹ Complainant acknowledges that the debtor’s counsel served him with the order by email the day it was issued and by mail the next day, both in advance of the contempt hearing. He states that he did not open the email right away, and returned the mail package unopened. Complainant alleges that he was “properly served” by a process server “almost a week after the contempt citation was issued.”

Apart from the merits-related allegations, Complainant claims the Subject Judge “displayed judicial bias” during the hearing on the debtor’s contempt motion. Specifically, he contends that the Subject Judge stated “how much he respected counsel for [the debtor], while accusing me of lying in regards to the TRO.” In addition, Complainant alleges he “was bullied and harassed throughout this process by the lawyers and the courts.”

A detailed review of the record of the adversary proceeding, including the transcript of the contempt hearing, does not lend support to Complainant’s claims. The Subject Judge did not exhibit bias against Complainant or behave in a manner that would reasonably cause a litigant to feel “bullied and harassed.” Rather, the Subject Judge was courteous and respectful throughout the proceeding, permitting both sides ample time to present their respective positions. The Subject Judge asked questions and spoke directly to Complainant at times, but never in an inappropriate or hostile manner.

I note that the Subject Judge did conclude that Complainant’s position was not credible, stating at one point, “Frankly, I do not believe what you just said.” Reaching a determination on Complainant’s credibility was, however, entirely appropriate in the context of this hearing. Complainant’s disagreement with the Subject Judge’s credibility determination is merits-related. See 28 U.S.C. § 352(b)(1)(A)(ii); Rule 3(h)(3)(A), Rules for Judicial-Conduct and Judicial-Disability Proceedings. Later during the hearing, the Subject Judge commented that debtor’s counsel is “an extremely professional and

competent and honest person.” Contrary to Complainant’s view, however, an observation about counsel’s competence does not reflect bias in favor of the debtor. The comment was part of the Subject Judge’s entirely appropriate suggestion to Complainant that he consult with a lawyer concerning how to present his claims in the upcoming preliminary injunction hearing.

Thus, the record provides no evidence to substantiate Complainant’s judicial misconduct allegations. Complainant’s allegations are frivolous and unsupported by evidence that would raise an inference that misconduct occurred. Accordingly, they are 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).²

/s/ Theodore A. McKee
Chief Judge

² After filing the initial complaint, Complainant submitted letters containing similar allegations, which were not made under penalty of perjury as required under Rule 6, Rules for Judicial-Conduct and Judicial-Disability Proceedings. I have considered these allegations pursuant to Rule 5 and conclude that they do not provide “reasonable grounds for inquiry” into the existence of misconduct or disability, for the same reasons discussed above. I therefore decline to identify any complaints based upon these allegations. Rule 5, Rules for Judicial-Conduct and Judicial-Disability Proceedings.

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ORDER

(Filed: May 13, 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.

/s/ Theodore A. McKee
Chief Judge

Dated: May 13, 2013