

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. No. 03-13-90035

IN RE: COMPLAINT OF JUDICIAL MISCONDUCT
OR DISABILITY

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

MEMORANDUM OPINION

(Filed: August 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.

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).

The Subject Judge is presiding over a complex bankruptcy proceeding in which Complainant has appeared pro se. On the cover sheet of the complaint, Complainant notes

that this complaint of judicial misconduct does not directly concern actions by the Subject Judge, but rather by “his staff.” Complainant notes, however, that “we notified the judge (no response).”

In the statement of facts in support of the complaint, Complainant alleges the mishandling of three submissions ultimately filed in the bankruptcy proceeding: a set of objections that was received by the Bankruptcy Court Clerk’s Office on Tuesday, February 5, 2013, and entered on the docket on Thursday, February 7, 2013; a letter-motion that was received by the Clerk’s Office on Monday, February 25, 2013 and entered on the docket on Thursday, February 28, 2013; and a motion that was received by the Clerk’s Office on Thursday, March 28, 2013, and entered on the docket on Monday, April 1, 2013.

Complainant alleges that, upon inquiring about these submissions, the Clerk’s office stated that “my motion was in [the Subject Judge’s] chambers for 6 days.” Complainant questions, “is this fact true or is it a lie. I have no way of knowing.” In addition, because a number of documents were filed electronically by other litigants during the period between when the three documents were received and entered on the docket, the docket numbers are out of order. Complainant posits that the irregular numbering reflects “deception” in the docketing process. Finally, Complainant claims that these allegations demonstrate “Repeated bias in this court or of repeated Mistakes – only Providence knows the Truth.”

As Complainant appears to recognize, a Bankruptcy Judge ordinarily does not make docket entries, and there is nothing indicating that the Subject Judge did so here. To the extent Complainant's allegations concern actions by the members of the Bankruptcy Court staff who make docket entries, those individuals are not covered by the Judicial Conduct and Disability Act. Such allegations cannot constitute judicial misconduct and 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.

To the extent Complainant alleges that the three identified examples give rise to an obligation on the part of the Subject Judge to discipline staff members in response to Complainant's complaints of delay or otherwise demonstrate bias on the part of the Subject Judge, the allegations are baseless. The fact that the docketing process may at times take a few days not give rise to a reasonable conclusion that any form of judicial misconduct occurred. Moreover, crediting the allegation that Complainant was advised that the Subject Judge reviewed Complainant's submissions prior to their being docketed, such a practice does not present cause for concern. It is a practical necessity that documents received by the Clerk's Office must be subject to some form of review before they can be correctly processed and entered on a docket. Finally, Complainant does not explain how the brief period between receipt and docketing of the three submissions caused harm. Notably, none of the three submissions was designated as an emergency, and all were considered by the Subject Judge in due course.

In short, Complainant's allegations of judicial misconduct are frivolous and unsupported by any evidence that would raise an inference that misconduct has occurred. They are therefore dismissed. 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) and (iii).

/s/ Theodore A. McKee
Chief Judge

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ORDER

(Filed: August 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) 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: August 9, 2013