

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

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J.C. No. 03-13-90098

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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: July 18, 2014

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).

Several related mortgage companies (the “Debtors”) filed a Chapter 11 bankruptcy petition in April 2007. The matter was assigned to the Subject Judge. In November 2008, Complainants, a married couple, sought to file a claim against the Debtor for more than

\$270,000, based upon the Debtors' allegedly fraudulent mortgage practices. The Subject Judge determined their claim was barred, having been filed after the so-called "bar date."<sup>1</sup> In 2013, Complainants filed an appeal to the District Court from one of the Subject Judge's orders in this regard. The appeal is pending. In early 2014, at the Subject Judge's request, the bankruptcy proceeding was reassigned from the Subject Judge to a different bankruptcy judge pursuant to the bankruptcy court's random assignment procedure.

Complainants filed this complaint of judicial misconduct in December 2013. Pursuant to Rule 11(b), Rules for Judicial-Conduct and Judicial-Disability Proceedings, I asked the Subject Judge to respond to Complainants' allegations. Having reviewed the Subject Judge's response, I now address the complaint.

Complainants allege broadly that the Subject Judge has ruled "so consistently in favor of [the Debtor] and contrary to facts he himself are aware, and blatantly in disregard of the rule of law and the facts, and detrimental to individual claimants as to constitute a pattern of intentional and coordinated wrongdoing from what a reasonable person can infer his bias, prejudice, and abuse of power in furthermore [*sic*] of a bankruptcy fraud scheme." Among other things, they contend that the Subject Judge "participated in the scheme to cover up . . . bankruptcy fraud" by appointing a bankruptcy examiner rather than a Chapter 11 Trustee, and then by permitting the Debtor's counsel to "continuously hamper[ ]" the bankruptcy examiner's investigation by "[doing] nothing to force compliance with discovery and other Examiner's request[s]." In addition, Complainants

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<sup>1</sup> Complainants dispute the sufficiency of the notice provided by the Debtors prior to their claim being barred.

allege that the Subject Judge wrongly has permitted individuals' claims to be "indefinitely put on hold by the Court or as the court refers to it, as 'taken under advisement' for years. . . ." Complainants further allege that, after a period of "more than 19 months," the Subject Judge erroneously denied their motion for reconsideration and to compel. Complainants also contend that one litigant's motion for the Subject Judge's recusal "fell upon deaf ears" and was "summarily dismissed . . . with self serving explanations."

Clearly, these allegations are merits-related. "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. Indeed, the merits of some of these rulings may be considered by the District Court in the appeal currently pending there. 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). Because Complainant's merits-related allegations are not cognizable in this administrative proceeding, they 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.

Next, Complainants allege "upon information and belief" that the Subject Judge was chief judge at the time the bankruptcy petition was filed, and that he used that authority to "appoint[ ] the case to himself for disposition." As a factual matter, this

allegation is baseless. The Subject Judge was not the chief judge in 2007, which is when the bankruptcy petition was filed. Moreover, the random assignment of judges to cases is handled by Clerk's Office personnel, not by individual judges generally or by chief judges specifically. This allegation is frivolous and unsupported by any evidence that would raise an inference that misconduct has occurred. It is 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.

Complainants further allege that the Subject Judge's "relationship, partiality with certain professionals, financial institutions and lenders" and his "employment background and current and past civic involvement" have "affected his ability to rule impartially and objectively. . . ." Specifically, they contend that the Subject Judge appointed a new CEO for the Debtors who, according to Complainants, is "a member and past chairman" of a professional organization of which the Subject Judge is president. Complainants also contend that the Subject Judge's employment in a law firm prior to taking the bench is inappropriate, alleging vaguely that, at the law firm, "he represented financial instructions [*sic*] corporate creditors, landlords and debtors in bankruptcy, workouts, and financing matters."

First, Complainants' implication that the Subject Judge's prior private practice in the area of bankruptcy more than a decade ago, without more, somehow per se constitutes judicial misconduct is entirely frivolous. Complainants fail to articulate any past representation that might give rise to a conflict of interest, and none is apparent from the

record. Indeed, in his response, the Subject Judge expressly confirmed that he never represented any party to Complainants' proceeding.

Next, Complainants are incorrect in their allegation that the Subject Judge "named" a fellow organization member as CEO for the Debtors. Rather, the record reflects that the Debtors selected the CEO prior to filing for bankruptcy. Moreover, where, as here, a complaint alleges judicial misconduct based upon activities occurring outside a Subject Judge's official duties, the misconduct is cognizable only "if the conduct might have a prejudicial effect on the administration of the business of the courts, including a substantial and widespread lowering of public confidence in the court among reasonable people." Rule 3(h)(2), Rules for Judicial-Conduct and Judicial-Disability Proceedings; see also 28 U.S.C. § 351(a) (misconduct is "conduct prejudicial to the effective and expeditious administration of the business of the courts"). The Rules permit judges some leeway in their extra-official activities. See Rule 3 Commentary, Rules for Judicial-Conduct and Judicial-Disability Proceedings.

In this case, as its website indicates, the professional organization is enormous; it has more than nine thousand members, including judges, in numerous chapters throughout the world. Complainants' allegations about the Subject Judge's participation in this vast professional organization fall far short of creating an inference of partiality on the part of the Subject Judge, or otherwise reasonably give rise to a substantial and widespread lowering of public confidence in the court. Accordingly, these allegations are dismissed as frivolous and unsupported by any evidence that would raise an inference that

misconduct has occurred. 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)(ii) and (iii). It is noted that a substantially similar complaint was filed against the same Subject Judge by another other litigant in the same bankruptcy matter, and that complaint also was dismissed under these provisions. See J.C. No. 03-14-90005. Complainants' attention is therefore directed to Rule 10(b), Rules for Judicial-Conduct and Judicial-Disability Proceedings.<sup>2</sup>

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s/ Theodore A. Mckee  
Chief Judge

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<sup>2</sup> Rule 10(b), Rules for Judicial-Conduct and Judicial-Disability Proceedings, states:

Orchestrated Complaints. When many essentially identical complaints from different complainants are received an appear to be part of an orchestrated campaign, the chief judge may recommend that the judicial council issue a written order instructing the circuit clerk to accept only a certain number of such complaints for filing and to refuse to accept further ones. The clerk must send a copy of any such order to anyone whose complaint was not accepted.

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ORDER

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Filed: July 18, 2014

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)(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 clerk of the court of appeals within **35 days** of the date on the clerk's letter informing the parties of the chief judge's order.

18(b) Form. The petition should be in letter form, addressed to the clerk 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 Clerk’s Office 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: July 18, 2014