

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

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J.C. No. 03-15-90084

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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: October 29, 2015)

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, a *pro se* litigant, was a creditor in his ex-wife’s bankruptcy proceeding. In that proceeding, the trustee sold certain real estate co-owned by

Complainant and his ex-wife. Over the past approximately ten years, Complainant has initiated a number of adversary proceedings related to his ex-wife's bankruptcy and the sale of the real estate. Although the bankruptcy proceeding was settled more than two years ago, Complainant continues to attempt to invalidate the settlement, pursue his claims concerning the real estate, and seek sanctions against various individuals, including his ex-wife and the trustee.

In this complaint of judicial misconduct, Complainant alleges that the Subject Judge and others<sup>1</sup> have “rewarded the [bankruptcy] debtor in concealing its illegal behavior.” Specifically, Complainant claims the ex-wife and trustee wrongfully and fraudulently permitted the sale of the co-owned real estate and other assets while Complainant was incarcerated. Complainant further alleges that, although he provided “documentation of the fraudulent concealments” to the court in the course of the adversary proceedings, the Subject Judge “rubber stam[ed] illegal fraud deficiencies” and “rigged the game” by “assisting debtor with the concealing [of] its illegal behavior. . . .”

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<sup>1</sup> To the extent Complainant alleges wrongdoing by the bankruptcy debtor, the trustee, and others, those individuals are not covered by the Judicial Conduct and Disability Act or by the Rules for Judicial-Conduct and Judicial-Disability Proceedings. Rule 4, Rules for Judicial-Conduct and Judicial-Disability Proceedings (a complaint filed under the Rules “may concern the actions or capacity **only of judges** . . . .” (emphasis added)). Because such individuals are not judges, any allegations concerning their allegedly improper behavior 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. In addition, Complainant presents allegations concerning the former presiding Bankruptcy Judge, who is retired. Because complaints under the Judicial Conduct and Disability Act may only be filed against judges currently holding an office described in Rule 4 of the Rules for Judicial-Conduct and Judicial-Disability Proceedings, see Rule 8(c), Rules for Judicial-Conduct and Judicial-Disability Proceedings, such allegations also will not be addressed in this opinion.

Complainant repeatedly has raised all of these contentions in the course of the bankruptcy-related proceedings and in several appeals to the District Court. Accordingly, the allegations of the complaint are merits-related. Rule 3(h)(3)(A), Rules for Judicial-Conduct and Judicial-Disability Proceedings (“An allegation that calls into question the correctness of a judge’s ruling, including a failure to recuse, without more, is merits-related.”). Merits-related allegations do not constitute cognizable judicial misconduct. 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. 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, these 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.

Apart from the merits-related allegations, Complainant has provided nothing to substantiate his claims that the Subject Judge engaged in fraud, “assist[ed] the debtor,” or “rubber stamped” the wrongful behavior of others. The record in this matter provides no support for such allegations. Accordingly, any remaining allegations are dismissed as frivolous and unsupported by 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)(i), (ii), and (iii).

s/ Theodore A. McKee  
Chief Judge

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ORDER

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(Filed: October 29, 2015)

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 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: October 29, 2015