

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. No. 03-13-90073

IN RE: COMPLAINT OF JUDICIAL MISCONDUCT
OR DISABILITY

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

MEMORANDUM OPINION

Filed: March 19, 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”).¹ 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

¹ To the extent Complainant’s allegations concern individuals not covered by the Judicial Conduct and Disability Act, including a Standing Chapter 13 Trustee and others, the allegations against them 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).

In October 2008, Complainants, a married couple, filed a voluntary Chapter 13 bankruptcy petition, which was assigned to the Subject Judge. The Standing Chapter 13 Trustee for the District participated in the case. When the Complainants did not adhere to the requirements of the Chapter 13 plan, the matter was converted to a Chapter 7 proceeding. Accordingly, in June 2011, the Subject Judge terminated the Standing Chapter 13 Trustee and appointed a Chapter 7 Trustee. The matter remains ongoing.²

In July 2013, Complainants filed a pro se petition for a writ of mandamus seeking the Subject Judge's recusal.³ In the petition, Complainants alleged that the Subject Judge had a conflict of interest stemming from a prior work relationship with the Standing Chapter 13 Trustee. Specifically, they alleged that both the Subject Judge (who was formerly the Standing Chapter 13 Trustee) and his replacement, the current Standing Chapter 13 Trustee, worked together as colleagues in the Office of the Chapter 13 Trustee. Complainants further alleged that the Subject Judge formerly had been employed by a law firm, which later employed other private practitioners who serve on the panel of Chapter 7

² Complainants were represented by retained counsel in the Chapter 13 proceeding. Counsel withdrew from the representation in May 2011 (shortly before the matter was converted to a Chapter 7 proceeding), after Complainants filed an ethics grievance against him. Complainants have since been proceeding pro se.

³ Complainants initially filed a pro se motion for the Subject Judge's recusal in the Bankruptcy Court, which the Subject Judge denied. The mandamus petition contained allegations that were not presented in the motion to the Subject Judge.

Trustees, including Chapter 7 Trustees who participated in Complainants' case. Finally, Complainants alleged that the Subject Judge holds a financial interest in a private entity named for a former (now deceased) Chapter 13 Trustee, which, they contend, benefits financially from fees generated by the bankruptcy cases over which the Subject Judge presides.

The Subject Judge submitted a certification under penalty of perjury responding to Complainants' allegations. Among other things, the Subject Judge stated that he did not work in the Office of the Chapter 13 Trustee at the same time as the current Standing Chapter 13 Trustee. Rather, the current Standing Chapter 13 Trustee took over the Subject Judge's responsibilities in that role when the Subject Judge ascended to the bench.⁴ The Subject Judge also stated that he never worked as a partner or business associate in any capacity with the Chapter 7 Trustees that participated in Complainants' case or, indeed, with any Chapter 7 Trustee panel member, although the Subject Judge co-authored a bankruptcy manual with a panel member who did not participate in Complainants' case. Finally, the Subject Judge denied the Complainants' allegation that he receives pecuniary benefits from a trust in the name of a former Chapter 13 Trustee. Complainants filed a supplemental petition contesting the Subject Judge's response, including detailed charts refuting his statements point-by-point and accusing him of perjury.

⁴ The Subject Judge acknowledged that, at one time, the Subject Judge and the Standing Chapter 13 Trustee both had served (along with numerous other private practitioners) on the panel of Chapter 7 Trustees.

In September 2013, the Court of Appeals denied the petition for a writ of mandamus, describing the Subject Judge's response to the Complainant's petition as "uncontested." Complainants then sought *en banc* rehearing, arguing that the Court of Appeals had overlooked their supplemental petition, including their response contesting the Subject Judge's certification, and reiterating their arguments for recusal. The Court of Appeals denied the petition for rehearing.

In this complaint of judicial misconduct, Complainants repeat the allegations raised in their mandamus petition, the supplement to the petition, and the petition for *en banc* rehearing. They reiterate their allegations that the Subject Judge "willfully and knowingly concealed and failed to disclosed his relationships and conflicts of interest with [the Chapter 13 Trustee], and conflicts of interest with other Chapter 7 Trustees. . . ." In addition, they once again allege that the Subject Judge "retain[s] financial interests in the privately held [trust in the name of a former Chapter 13 Trustee], who allegedly benefits financially from the Chapter 13 proceedings and related fees generated and extracted from the bankruptcy estates cases presided over by [the Subject Judge]."

As discussed, these allegations all were raised and addressed in the course of Complainants' mandamus proceeding in the Court of Appeals. The allegations are therefore 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, it is apparent that this complaint of judicial misconduct is nothing more than an attempt to re-

argue all of the claims that Complainants unsuccessfully presented to the Court of Appeals. This administrative forum does not, however, permit Complainants another bite at this apple. 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 Complainants’ allegations were presented to and considered by the Court of Appeals in the course of the petition for a writ of mandamus, supplement to the petition, and the petition for rehearing, the allegations are not cognizable as judicial misconduct. They 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.

Moreover, the Subject Judge expressly certified that he never worked as a partner or business associate with the current Standing Chapter 13 Trustee or any Chapter 7 Trustee panel member. In addition, even if it were appropriate to credit Complainants’ accusations about the Subject Judge’s professional associations rather than the Subject Judge’s express certification to the contrary, Complainants fail to explain why the existence of such prior professional relationships, without more, constitutes a circumstance rising to the level of judicial misconduct. Finally, the Standing Chapter 13 Trustee is no longer participating in the case. Accordingly, these allegations also are subject to dismissal as 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)(D), Rules for Judicial-Conduct and Judicial-Disability Proceedings.

With regard to the allegations concerning the Subject Judge's alleged financial interest in a privately-held trust in the name of a former Chapter 13 Trustee, once again, the Subject Judge expressly certified that he holds no such interest. Complainants' sole support for this allegation is a series of printouts of internet listings of unclear origin for an entity titled "[Former Chapter 13 Trustee] Chapter 13 Trst." The address for the "Trst" (it is unclear whether these letters are intended to denote "Trustee" or "Trust") is the street address and phone number for the current office of the Standing Chapter 13 Trustee, and lists the Subject Judge as "Principal." It is not clear who creates or maintains these listings, and the information they provide is confusing and unhelpful. These documents do not constitute reliable evidence that the Subject Judge "benefits financially from the Chapter 13 proceedings" and, without more, do not refute the Subject Judge's express certification that he holds no financial interest in such an entity. Accordingly, these allegations are similarly subject to dismissal as 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)(D), Rules for Judicial-Conduct and Judicial-Disability Proceedings.

Next, Complainants accuse the Subject Judge of perjury. They state, "we direct this Court's attention to [the Subject Judge's "financial Disclosure Report for Calendar Year 2006" . . . [in which h]e falsely claimed he received income as a 'U.S. Trustee' for '2004,' '2005,' & '2006.'" [The Subject Judge] was never a United States Trustee as he

falsely claimed and misrepresented.” According to Complainants, “[b]ecause he lied so freely about being a U.S. Trustee If he lied once, his credibility should be forever destroyed.”

The financial disclosure document on which Complainants rely for these allegations, which is appended to the complaint of judicial misconduct, reflects that the Subject Judge’s position prior to his elevation to the bench was “Standing Chapter 13 US Trustee.” It further states that, at that time, the source of his income was “US Trustee.” As a factual matter, these disclosures do not constitute perjury. The Standing Chapter 13 Trustee is appointed by the United States Trustee. See 28 U.S.C. §586. The Subject Judge’s disclosure indicating that he acted as a Standing Chapter 13 Trustee and received income from the US Trustee does not represent a “false claim” that the Subject Judge was actually employed as a United States Trustee. These allegations 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), (ii), and (iii).

s/ Theodore A. McKee
Chief Judge

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ORDER

Filed: March 19, 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)(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.

s/ Theodore A. Mckee
Chief Judge

Dated: March 19, 2014