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UNITED STATES COURT OF APPEALS

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FOR THE THIRD CIRCUIT
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February 20, 1991

CONFIDENTIAL

Honorable John F. Gerry,
Chief Judge
United States District Court
of New Jersey
P. O. Box 588
Camden, New Jersey 08102

✓ Mr. George Sassower
16 Lake Street
White Plains, New York 10603

Re: Matter of a Complaint Against a
United States District Judge Under
28 U.S.C. §372(c)
J. C. No. 91-08

Dear Judge Gerry:

Enclosed herewith is copy of Opinion and Order entered
today by Chief Judge Sloviter in the above-entitled case.

Very truly yours,
SALLY MRVOS, Clerk

By:

M. Elizabeth Ferguson

Chief Deputy Clerk

MEF/af
Enclosures

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. No. 91-08

GEORGE SASSOWER,
Complainant,

v.

HON. JOHN F. GERRY,
Respondent.

ORIGINAL PROCEEDINGS UNDER 28 U.S.C. § 372(c)

MEMORANDUM OPINION

(Filed: February 20, 1991)

PRESENT: SLOVITER, Chief Judge.

George Sassower has filed a complaint pursuant to 28 U.S.C. § 372(c) against Hon. John F. Gerry, Chief Judge of the District of New Jersey, which is within the Third Circuit.

The complaint will be dismissed, pursuant to 28 U.S.C. § 372(c)(3)(A), for the reasons that follow.

Complainant was an unsuccessful appellant in an appeal from a criminal conviction to the Third Circuit, C.A. No. 89-5810,¹ as well as appellant in a pending appeal in the Third Circuit, C.A. No. 90-5147.

1. This is listed in the complaint erroneously as "89-8510".

In this third of four judicial misconduct complaints filed on January 28, 1991, Mr. Sassower makes several assertions against Judge John F. Gerry, Chief Judge of the District of New Jersey. He claims that Judge Gerry improperly held ex parte communications with Judge Politan, a New Jersey district judge, and with Assistant U.S. Attorney Susan C. Cassell; that there was a conspiracy among Judge Gerry, Judge Politan, Attorney Cassell and a law firm, Clapp & Eisenberg, P.C. to conceal the existence of motions filed by Mr. Sassower; and that Judge Gerry improperly assigned a contempt proceeding to Judge Politan.

Judge Gerry, who is not a judge of the United States Court of Appeals for the Third Circuit, cannot be responsible for actions taken by this court in the two appeals that are specified in Mr. Sassower's complaint form, i.e., Nos. 89-5810 and 90-5147. Thus, these allegations in this complaint are frivolous within the meaning of 28 U.S.C. § 372(c)(1)(3)(A)(iii). To the extent that Mr. Sassower is complaining about the assignment of his district court cases by Judge Gerry to Judge Politan or about the result reached in the district of New Jersey proceedings, those complaints are directly related to the merits of a decision or procedural ruling.

I find that the complainant's allegations do not state a cognizable claim under 28 U.S.C. § 372(c). Under 28 U.S.C. § 372(c)(3)(A), a Chief Judge, after reviewing a judicial complaint, may

dismiss the complaint, if [s]he finds it to be (1) not in conformity with paragraph (1)

of this subsection,² (ii) directly related to the merits of a decision or procedural ruling, or (iii) frivolous.

This section reflects Congress' concern that judicial complaints not serve as an alternative means for disappointed litigants to challenge judicial action or inaction in the course of litigation which is reviewable by appeal or mandamus.

I find that the present allegations are frivolous within the meaning of 28 U.S.C. § 372(c)(3)(A)(iii) and/or directly related to the merits of a decision or procedural ruling. 28 U.S.C. § 372(c)(3)(A)(ii). Accordingly, the complaint will be dismissed.



Chief Judge

2. The reference is to 28 U.S.C. § 372(c)(1) which provides for complaints that a judicial officer "has engaged in conduct prejudicial to the effective and expeditious administration of the business of the courts" or that such judicial officer "is unable to discharge all the duties of office by reason of mental or physical disability."

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HON. JOHN F. GERRY,
Respondent.

ORIGINAL PROCEEDINGS UNDER 28 U.S.C. § 372(c)

ORDER

(Filed: February 20, 1991)

PRESENT: SLOVITER, Chief Judge.

On the basis of the foregoing opinion dated
February 20, 1991 , it is

ORDERED AND ADJUDGED that the written complaint of
Mr. George Sassower brought pursuant to 28 U.S.C. § 372(c)(1) is
hereby dismissed pursuant to 28 U.S.C. § 372(c)(3)(A) because
the allegations contained therein are frivolous within the
meaning of 28 U.S.C. § 372(c)(3)(A)(iii) and/or are directly
related to the merits of a decision or procedural ruling. 28
U.S.C. § 372(c)(3)(A)(ii).

This order constitutes a final order under Rule 4(B),
Rules of the Judicial Council of the Third Circuit Governing
Complaints of Judicial Misconduct or Disability.

The complainant is notified in accordance with Rule 5, Rules of the Judicial Council of the Third Circuit Governing Complaints of Judicial Misconduct or Disability, of his or her right to appeal this decision via the following procedures.

(A) Petition. [A] petition for review may be addressed to the Judicial Council of the Third Circuit.

(B) Time. A petition for review must be received in the office of the clerk of the court of appeals within 30 days of the date of the clerk's letter transmitting the chief judge's order.

(c) Form. A petition should be in the form of a letter addressed to the clerk of the court of appeals, beginning "I hereby petition the judicial council for review of the chief judge's order . . ." There is no need to enclose a copy of the original complaint.

The full text of Rule 5 is available from the Clerk's Office of the Court of Appeals of the Third Circuit.



Chief Judge

Dated: February 20, 1991