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UNITED STATES COURT OF APPEALS

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FOR THE THIRD CIRCUIT
21400 UNITED STATES COURTHOUSE
601 MARKET STREET
PHILADELPHIA 19106-1790

February 20, 1991

CONFIDENTIAL

Honorable A. Leon Higginbotham, Jr.,
United States Circuit Judge
22613 U. S. Courthouse
601 Market Street
Philadelphia, PA 19106-1792

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

Re: Matter of a Complaint Against a
United States Circuit Judge Under
28 U.S.C. §372(c)
J. C. No. 91-06

Dear Judge Higginbotham and Mr. Sassower:

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. 91-06

GEORGE SASSOWER,
Complainant,

v.

HON. A LEON HIGGINBOTHAM, JR.,
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 the Hon. A. Leon Higginbotham, Jr., a Senior Circuit Judge and formerly Chief Judge of the United States Court of Appeals for the Third Circuit. This is the first of four complaints filed by Mr. Sassower on January 28, 1991.

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

Mr. Sassower was a defendant in a criminal action in the District of New Jersey, Crim. No. 89-103 and plaintiff pro se in a civil RICO action, Civ. No. 88-1012. Mr Sassower took

appeals from adverse judgments in each of these actions to the Third Circuit, Nos. 89-5810 and 90-5147, respectively.

Complainant characterizes the nature of this complaint as "Misconduct - Administrative," and appears to assert three separate allegations against the respondent. First, complainant describes instances of what he terms "misconduct" in the Clerk's Office and the Staff Attorney's Office of the Third Circuit. He alleges that the respondent knew or should have known about such misconduct.

Pursuant to Rule 1(C)(2) of the Rules of the Judicial Council of the Third Circuit Governing Complaints of Judicial Misconduct or Disability, any complaints about the Clerk's Office or the Staff Attorney's Office should be made to the employing court under the procedures set forth in Judicial Council Rule 15. Complainant's allegations against those parties cannot be made in this proceeding, and in any event do not constitute judicial "conduct prejudicial to the effective and expeditious administration of the business of the courts." 28 U.S.C. § 372(c)(1).

Complainant next alleges that the respondent should have investigated the conduct of Clapp & Eisenberg, P.C. Such an allegation is clearly frivolous as respondent had no duty to conduct such an investigation. Finally, complainant makes a general observation that "the Third Circuit is a 'Forum for Extortion'". To the extent this is an allegation against respondent, this conclusory statement, without more, is clearly frivolous.

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 (i) not in conformity with paragraph (1) of this subsection,¹ (ii) directly related to the merits of a decision or procedural ruling, or (iii) frivolous.

This section reflects the legislature's 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 not in conformity with 28 U.S.C. § 372(c)(1) and/or are frivolous within the meaning of 28 U.S.C. § 372(c)(3)(A)(iii). Accordingly, the complaint will be dismissed.



Chief Judge

1. 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. A LEON HIGGINBOTHAM, JR.,
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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
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 it
is not in conformity with 28 U.S.C. § 372(c)(1) and/or is
frivolous within the meaning of 28 U.S.C. § 372(c)(3)(A)(iii).

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 after 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