

CONFIDENTIAL
BEFORE THE CHIEF JUDGE
OF THE ELEVENTH JUDICIAL CIRCUIT

FILED
U.S. COURT OF APPEALS
ELEVENTH CIRCUIT
OCT 06 2015
Amy C. Nerenberg
Acting Clerk of Court

Judicial Complaint No. 11-15-90091

IN THE MATTER OF A COMPLAINT FILED BY _____

IN RE: The Complaint of _____ against _____, U.S. Bankruptcy Judge for the U.S. Bankruptcy Court for the _____ District of _____, under the Judicial Conduct and Disability Act of 1980, Chapter 16 of Title 28 U.S.C. §§ 351-364.

ORDER

_____ (“Complainant”) has filed this Complaint against United States Bankruptcy Judge _____ (the “Subject Judge”), pursuant to Chapter 16 of Title 28 U.S.C. § 351(a) and the Rules for Judicial-Conduct and Judicial-Disability Proceedings of the Judicial Conference of the United States (“JCDR”).

Background

The record shows that in November 2014 _____ filed a voluntary petition for Chapter 11 bankruptcy. _____ listed Complainant as a creditor holding an unsecured claim and listed as personal property a final judgment against Complainant.

In January 2015 Complainant filed a complaint against _____, which was docketed as an adversary proceeding, and in the complaint, he raised numerous claims against the president of _____ and others. In April 2015 Complainant filed a motion for summary judgment, arguing that _____ failed to file an answer within the required time. At a hearing on April 9, 2015, the Subject Judge stated that he would deny the motion for summary judgment, primarily because he did not know what Complainant was asking for in his complaint. The Subject Judge suggested that Complainant file an amended complaint and explained that it should include general allegations to support the specific requests for relief. The Subject Judge also recommended that Complainant consult an attorney and stated, “I encourage you for the umpteenth time, find a bankruptcy lawyer. Believe me, it will help you.” After the hearing, the Subject Judge entered an order denying the motion for summary judgment for the reasons stated at the hearing. After a status conference on July 9, 2015, the Subject Judge dismissed the adversary proceeding with prejudice for the reasons stated at the hearing.

Meanwhile, in the main bankruptcy case, Complainant filed multiple motions seeking various types of relief, arguing, among other things, that _____ Board of Directors was invalid. After a hearing on July 9, 2015, the Subject Judge denied the motions for the reasons stated at the hearing. After that, Complainant filed a motion for the court to appoint a trustee and a motion for the Subject Judge to show cause why he should not be charged with racketeering. In those motions, Complainant generally took issue with the Subject Judge's orders denying various other motions. On August 18, 2015, Complainant moved to stay the implementation of "any plan" until _____ proved that it had a duly elected board. A few days later, after a hearing, the Subject Judge denied the motion to stay for the reasons stated at the hearing. In late August 2015 the Subject Judge denied Complainant's motion to appoint a trustee and motion for the court to show cause.

Complaint

In his Complaint of Judicial Misconduct or Disability, Complainant discusses the merits of various arguments concerning the actions of _____, its members, and others, and he generally takes issue with the Subject Judge's orders in the bankruptcy proceedings. Complainant alleges that at the hearings, the Subject Judge "chastised" him "for not hiring an attorney." He also appears to allege that the Subject Judge is prejudiced against pro se litigants and covered up certain improper conduct. Complainant requests that the Subject Judge be prosecuted and terminated from his employment. He attached various documents to his Complaint.

Discussion

Rule 3(h)(3)(A) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings of the Judicial Conference of the United States provides that cognizable misconduct does not include "an allegation that is directly related to the merits of a decision or procedural ruling." The Rule provides that "[a]n allegation that calls into question the correctness of a judge's ruling, including a failure to recuse, without more, is merits-related." Id. The "Commentary on Rule 3" states in part:

Rule 3(h)(3)(A) tracks the Act, 28 U.S.C. § 352(b)(1)(A)(ii), in excluding from the definition of misconduct allegations "[d]irectly related to the merits of a decision or procedural ruling." This exclusion preserves the independence of judges in the exercise of judicial power by ensuring that the complaint procedure is not used to collaterally attack the substance of a judge's ruling. Any allegation that calls into question the correctness of an official action of a judge — without more — is merits-related.

To the extent Complainant's allegations concern the substance of the Subject Judge's official actions, findings, and orders entered in the bankruptcy proceedings, the

allegations are directly related to the merits of the Subject Judge's decisions or procedural rulings. Apart from the decisions or procedural rulings with which Complainant takes issue, he provides no credible facts or evidence in support of his allegations that the Subject Judge "chastised" him for not hiring an attorney, is prejudiced against pro se litigants, covered up improper conduct, or otherwise engaged in misconduct.

The allegations of this Complaint are "directly related to the merits of a decision or procedural ruling," JCDR 11(c)(1)(B), and the Complaint "is based on allegations lacking sufficient evidence to raise an inference that misconduct has occurred or that a disability exists," JCDR 11(c)(1)(D). For those reasons, pursuant to Chapter 16 of Title 28 U.S.C. § 352(b)(1)(A)(ii) and (iii), and Rule 11(c)(1)(B) and (D) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings of the Judicial Conference of the United States, this Complaint is **DISMISSED**.



Chief Judge