

APR 11 2016

CIRCUIT EXECUTIVE

**FOR THE JUDICIAL COUNCIL  
OF THE ELEVENTH CIRCUIT**

**111590127**

**IN RE: COMPLAINT OF JUDICIAL  
MISCONDUCT OR DISABILITY**

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ON PETITION FOR REVIEW\*

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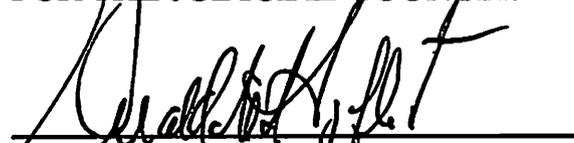
Before: TJOFLAT, HULL, MARCUS, WILSON, PRYOR, MARTIN, JORDAN, ROSENBAUM, and JULIE CARNES, Circuit Judges; MOORE, MERRYDAY, THRASH, BOWDRE, LAND, STEELE, WATKINS, and WOOD, Chief District Judges.

Upon consideration of the petitioner's complaint by a review panel consisting of Judges Tjoflat, Wilson, Pryor, Land, and Watkins, the order of Chief Judge Ed Carnes filed on 17 December 2015, and of the petition for review filed by the complainant on 28 January 2016, with no non-disqualified judge on the Judicial Council Review Panel having requested that this matter be placed on the agenda of a meeting of the Judicial Council,

The Judicial Council Review Panel hereby determines that the disposition of this matter was proper and said disposition is hereby **AFFIRMED**.

The foregoing actions are **APPROVED**.

FOR THE JUDICIAL COUNCIL:



United States Circuit Judge

\* Chief Circuit Judge Ed Carnes and Chief District Judge Rodgers did not take part in the review of this petition.

DEC 17 2015

Amy C. Nerenberg  
Acting Clerk of Court

**CONFIDENTIAL**

**BEFORE THE CHIEF JUDGE  
OF THE ELEVENTH JUDICIAL CIRCUIT**

**Judicial Complaint No. 11-15-90127**

**IN THE MATTER OF A COMPLAINT FILED BY \_\_\_\_\_**

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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.

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**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 an individual filed a voluntary petition for Chapter 7 bankruptcy. In February 2015 Complainant and his sister (the plaintiffs) filed an adversary proceeding complaint against the debtor. In the complaint, the plaintiffs asserted that in August 2014 a federal court in \_\_\_\_\_ imposed a constructive trust on certain property in favor of the plaintiffs, the debtor “concocted her own version of the constructive trust,” and the debtor was seeking to fraudulently avoid the enforcement of the August 2014 order. In March 2015 the debtor filed a motion to dismiss the complaint and requested oral argument. The debtor also filed an answer to the complaint. The plaintiffs filed a certification of good faith effort to resolve the dispute without court action and a motion for a protective order, seeking to quash a deposition notice served on them by the debtor.

The record shows that a hearing was held before the Subject Judge on July 21, 2015. After the hearing, the Subject Judge entered an order: (1) denying without prejudice the debtor’s motion to dismiss and converting it into a motion for summary judgment; (2) ordering that the \_\_\_\_\_ case was part of the record; (3) providing the plaintiffs with 30 days to file a response to the summary judgment motion; (4) denying without prejudice the plaintiffs’ motion for a protective order; (5) staying all discovery until further order of the court; and (6) denying without prejudice the debtor’s motion for sanctions and attorney’s fees. In August 2015 the plaintiffs filed a “Motion for

Abstention and Remand,” requesting that the bankruptcy court “remand” the proceeding to the Court of Appeals for the \_\_\_\_\_ Circuit, and the next month the plaintiffs filed a “Cross Motion for Summary Judgment.”

In late September 2015 the plaintiffs filed a Motion for Disqualification of the Subject Judge, generally arguing that he was biased and prejudiced against them. In Complainant’s supporting affidavit, he alleged, among other things, that the Subject Judge was verbally abusive, was disrespectful, and directed threatening dialogue at him at the July 2015 hearing. In October 2015 the Subject Judge denied the Motion for Disqualification, generally finding that the plaintiffs did not meet the statutory standard. The Subject Judge found that “any hostility or rancor perceived by the Plaintiffs at the July 21, 2015 hearing” did not serve as a basis for disqualification or recusal, and he stated, “This Judge’s candid assessment of a case for purposes of trial preparation, including the strengths and weaknesses of each side, is not a display of partiality, personal bias, or prejudice.”

### Complaint

In his Complaint of Judicial Misconduct or Disability, Complainant alleges that at the July 2015 hearing, the Subject Judge verbally abused him, was disrespectful, and directed “threatening dialogue” at him. Complainant states that the Subject Judge began by confronting Complainant about the plaintiffs’ motives for filing the adversary complaint, “implying” that they had an “ulterior motive,” and that the Subject Judge stated he “would have sanctioned” the plaintiffs for filing the complaint but the debtor’s attorney “failed to meet the timing requirements for a Rule 11 motion.” Complainant alleges that the Subject Judge “sarcastically” took a paragraph out of context from the complaint, stated that he did not care if the debtor had misrepresented the constructive trust, and “mocked a paragraph that alleged that the debtor concocted the constructive trust.”

Complainant complains that the Subject Judge “admonished” him for using the word “unlawful” in the adversary complaint, made a “derisive comment” about him and about the Court of Appeals for the \_\_\_\_\_ Circuit, stated that Complainant was not being truthful, and “blurted out something about my sister and I thinking we would get the property exclusive of our siblings.” Complainant states that, when the hearing turned to the plaintiffs’ motion for a protective order, the Subject Judge “asked me if I had ever practiced law in a courtroom. Thus began the stereotypical depiction of the incompetent black lawyer, as [the Subject Judge] spoke, in a condescending manner, about how lawyers do not seek protective orders or words to that effect.” Complainant asserts that the Subject Judge “accused” him of refusing to participate in discovery, engaged in a “personal attack” on him, stated that “they do not follow the discovery rules in the \_\_\_\_\_ federal court,” and “made a snarky remark” to him about being prepared

before going into a courtroom. He states that the Subject Judge “made other inappropriate comments but this is the gist of the interaction.”

Complainant states that there is no language in the relevant documents supporting the version of the constructive trust advanced by the debtor and the Subject Judge, and that the Subject Judge “made the argument personal” and “inappropriately attempted to de-legitimize our arguments by calling into question our character and motives and by manufacturing issues to avoid addressing the actual issue that is before the court.” Complainant asserts that the Subject Judge’s remarks were “inappropriate, objectionable, outwardly indicative of his bias and unbecoming in a court of law,” and he states that the Subject Judge’s “power to enter sanctions does not give him unbridled discretion to bully and threaten, to disregard the requirements of the law, to cover-up alleged wrongdoing or to ignore our constitutional rights.” Finally, Complainant alleges that the Subject Judge’s actions violated multiple canons of the Code of Conduct for United States Judges.

### 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, rulings, and orders entered in the adversary proceeding, the allegations are directly related to the merits of the Subject Judge’s decisions or procedural rulings. Complainant’s remaining claims are based on allegations lacking sufficient evidence to raise an inference that the Subject Judge treated Complainant or the other plaintiff in a demonstrably egregious and hostile manner, was biased or prejudiced against the plaintiffs, or otherwise engaged in misconduct.

Although Complainant may have perceived some of the Subject Judge’s conduct to be demonstrably egregious and hostile, the challenged statements were related to the Subject Judge’s assessment of the issues and were within the scope of his authority to

maintain control over his docket and the courtroom. See Reese v. Herbert, 527 F.3d 1253, 1263 (11th Cir. 2008) (recognizing courts' "inherent power to manage the conduct of litigation before" them); In re Sunshine Jr. Stores, Inc., 456 F.3d 1291, 1305 (11th Cir. 2006) (recognizing bankruptcy courts' inherent authority to "fashion an appropriate sanction for conduct which abuses the judicial process") (quotation marks omitted). Complainant has not shown that the Subject Judge made any improper statements or engaged in any actions that constituted 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**.



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Chief Judge