

CONFIDENTIAL

JUN 30 2016

BEFORE THE CHIEF JUDGE
OF THE ELEVENTH JUDICIAL CIRCUIT

David J. Smith
Clerk

Judicial Complaint No. 11-15-90132

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”).

As an initial matter, after Complainant filed his Complaint, he filed two supplemental statements. The filing of the supplemental statements is approved. See 11th Cir. JCDR 6.7.

Background

The record shows that in February 2013 the _____, though its attorney, _____ of the firm _____, filed a voluntary petition for Chapter 11 bankruptcy, listing Complainant as a creditor. After various proceedings, in October 2013 Complainant filed a motion to recuse the presiding bankruptcy judge. The bankruptcy judge denied the motion, but nevertheless directed the clerk to reassign the case to another bankruptcy judge in light of the Trustee’s request that the judge transfer the case “in the interests of economy.” The order explained:

[Complainant], who has (among other things) filed a motion to withdraw the reference of this entire case from the Bankruptcy Court; sought to vacate . . . at least 18 Orders previously entered; communicated on an ex parte basis with at least two judges of this Court; and filed dozens of otiose motions, objections, and appeals, has apparently represented to the Trustee that he will withdraw his motion to withdraw the reference and will, in general, be cooperative in attempting to resolve the issues involved if this case is transferred to another judge.

The case then was reassigned to the Subject Judge as the presiding bankruptcy judge.

After various additional proceedings, in December 2013 the Subject Judge granted the Trustee's request for mediation. The Subject Judge later appointed _____ as mediator, but the parties failed to resolve all of their disputes. In March 2014 Complainant filed a motion to recuse the Subject Judge, alleging that she was biased against him, had denied him his due process rights, and had expressed anger toward him. The Subject Judge denied the motion to recuse, finding that it was "another attempt to circumvent Court rulings that displease" Complainant and that there was no basis for recusal.

In May 2014 the Trustee filed a motion to approve the settlement agreement, setting out terms of a proposed compromise and settlement with Complainant and others. The Subject Judge granted that motion and ordered that the terms of the agreement were approved and incorporated into the settlement order. After that, Complainant filed a renewed motion to recuse the Subject Judge, generally arguing that she was biased against him. After a hearing, the Subject Judge denied the motion to recuse. In December 2014 the Trustee and Debtor filed a Second Amended Joint Plan of Reorganization. In February 2015 the Subject Judge entered an order confirming the plan, and the case was closed in April 2015.

The next month _____, who had been representing _____, filed an emergency motion to reopen the case in order to enforce the settlement agreement and seek contempt against Complainant. The motion contended that Complainant had breached the settlement agreement by serving a letter on _____ demanding that it file a lawsuit against _____. The Subject Judge granted the motion and reopened the case. On the same day, _____ filed an emergency motion to enforce the settlement agreement as to Complainant, to hold him in contempt, and for recovery of attorney's fees and costs, as well as a motion to enforce the bankruptcy plan. After a hearing, the Subject Judge granted the motions, determined that _____ was entitled to recover attorney's fees and costs against Complainant, and stated that if there was a dispute as to fees, the dispute would be set for an evidentiary hearing. Complainant filed a notice of appeal.

In June 2015 _____ filed a detailed fee statement seeking a specified amount of attorney's fees. The next month, Complainant filed an opposition to the fee statement and requested a hearing. The Subject Judge then entered an order determining that there was no need for an evidentiary hearing to resolve the objections that had been raised and directing Complainant to pay _____ a specified amount of attorney's fees in accordance with the fee schedule. Complainant filed a notice of appeal as to that order.

In early August 2015, Complainant filed an affidavit in which he, among other things, suggested that it should be investigated whether _____ had attempted to influence the court by contributing to _____ (“_____”). In his affidavit Complainant incorrectly described _____ as a _____ of the court. Complainant also asserted that _____ had engaged in misconduct by presenting himself as an attorney for what he claimed was a fictitious entity, “_____.”

Soon after that, Complainant sent a demand letter to the Subject Judge’s _____ in his capacity as _____ of _____, seeking to inspect and copy certain documents related to it. After that, in mid-August 2015, the Subject Judge entered a sua sponte order of recusal, stating that she had determined that it was “necessary and appropriate that she recuse herself from the bankruptcy case.” The case was then reassigned to a different bankruptcy judge.

Complaint

In his Complaint of Judicial Misconduct or Disability, Complainant alleges that the Subject Judge has engaged in a “pattern of dishonest, unethical conduct” and that:

the most recently discovered misconduct by [the Subject Judge] covering the entire period of her _____ years on the bench, i.e., targeting as donors, “attorneys”, and then soliciting and accepting contributions totaling tens of thousands of dollars to her own private _____ from the very attorneys who daily appear before her, in violation of Canon 4(C)(D)(4).

Complainant provides no details or information about the Subject Judge allegedly “targeting” donors and “soliciting and accepting contributions” apart from the bare assertion that she did so. Instead, Complainant takes issue with various orders entered by the Subject Judge, including the orders denying Complainant’s motions for her to recuse herself from the case. In a footnote, he asserts that the Subject Judge’s appointment of _____ as a mediator violated a local rule and that he recently discovered that “_____ was one of the largest donors” to what he describes as a “family charity.” He also objects to an order in which he contends that the Subject Judge “reversed herself” regarding an earlier order that said an evidentiary hearing would be held if there was a dispute about _____ fee statement. Complainant complains that “in a remarkable display of judicial arrogance and making herself a fact witness,” the Subject Judge approved the fee statement. In a footnote, Complainant states that he believes “that the posture and stress of the continuous attacks upon me by [the Subject Judge] played a major role in my _____ condition”

Complainant also contends that the Subject Judge took no action even though he presented her with “unimpeachable, documentary evidence of serious misconduct—of fraud—by an attorney,” which “was only the latest of [the Subject Judge’s] munificence

to her contributor, _____.” Complainant states that the Subject Judge denied his motion to set aside the previous presiding judge’s orders, refused to schedule a hearing on two of his motions, twice quashed his deposition notices to _____, and granted _____ fee application after being informed of his alleged misconduct. Complainant asserts: “Yes, _____ seems to have gotten his money’s worth out of his contributions to the _____ family charity.”

Complainant alleges that in addition to the Subject Judge’s misconduct in the case and the “half dozen Canons” she violated, the Subject Judge’s “scheme—implemented over the past several years—to solicit contributions from ‘attorneys’ and particularly those appearing before her[], which now taints all of her Orders in this case as well as in, potentially, every single case she has sat on, renders [the Subject Judge] unfit to serve.” In a footnote, Complainant states that the Subject Judge, “an Officer (_____) and _____ of the _____ family charity, and her _____, have stonewalled requests for disclosure of” information that is “supposed to be public.” He adds that “from the limited information available from the _____ postings on the internet, the contributors read like a ‘who’s who’ of the bankruptcy bar—including ‘_____.’”

Supplemental Statements

In Complainant’s first supplemental statement, he asserts that he wrote to the Subject Judge’s “_____, the titular _____ of their family charity, seeking information regarding the identity of attorneys who had been targeted for contributions, for the ones who were actually solicited to make contributions, and to those who made contributions, together with the amounts thereof.” He states that he received a response “presenting some documents but refusing to identify the attorneys/contributors,” which was “particularly disturbing since the charity’s filing of _____ years ago with the IRS and the State of _____ authorizing the entity disclosed that attorneys would be targeted to make contributions (the Judge’s _____ is not an attorney).”

Complainant asserts that the public statements by the charity from 2009, 2010, and 2013 “list[] major contributors and read[] like a ‘Who’s Who’ of the attorneys participating before this bankruptcy judge. In short, this judge targeted members of the Bankruptcy Bar and then put the arm on them to contribute.” Complainant attached a September 2015 letter addressed to him from “_____, _____” of _____, responding to a demand Complainant had made to the fund for certain documents.

In his second supplemental statement, Complainant states that he is including a “chart showing the identity of attorneys/firms practicing bankruptcy who the _____ private family charity solicited and/or received and accepted contributions from in the years 2009, 2010, and 2013.” He states that the chart shows attorneys and firms who regularly practice in the bankruptcy court and that there “is hardly a bankruptcy

firm/practitioner in this District that is not on the chart of donors!” Complainant says that the Subject Judge “even requested a contribution from her own _____.”

Complainant also states that _____ “has admitted making at least one contribution” in 2009 to the charity, and at that time _____ was appearing as counsel for a party before the Subject Judge in at least six cases. Finally, Complainant states that the Subject Judge “has solicited and accepted contributions from attorneys appearing before her for 10 years non-stop, and without one word of disclosure to those non-donors who happened to appear before her.”

Subject Judge’s Response to Limited Inquiry

Rule 11(a) requires the Chief Judge to review complaints of judicial misconduct or disability and determine what actions should be taken on them. See JCDR 11(a). Rule 11(b) provides in part that: “In determining what action to take under Rule 11(a), the chief judge may conduct a limited inquiry” and “may communicate orally or in writing with . . . the subject judge,” among others. JCDR 11(b); see also 28 U.S.C. § 352(a) (providing that the chief judge may conduct a limited inquiry and “may request the judge whose conduct is complained of to file a written response to the complaint”). In conducting the limited inquiry, the Chief Judge “must not determine any reasonably disputed issue.” JCDR 11(b). Dismissal of the complaint is appropriate, however, “when a limited inquiry . . . demonstrates that the allegations in the complaint lack any factual foundation or are conclusively refuted by objective evidence.” 28 U.S.C. § 352(b)(1)(B).

Pursuant to JCDR 11(b), I conducted a limited inquiry by asking the Subject Judge to file a written response to the complaint. In her response, the Subject Judge describes her involvement with _____, a publicly funded 501(c)(3) corporation.

The response states that on March 14, 2004, the Subject Judge’s _____, _____, died in a _____ five weeks after his _____ birthday. She and her _____ later established a _____ in memory of him to help children with certain disorders who are in foster care or low income families. The Subject Judge was initially the _____ of _____ but resigned as _____ and became the _____ when she became a bankruptcy judge in _____.

When she became a bankruptcy judge, she confirmed that it was ethically appropriate for her to remain on the _____ of the _____ as long as she was not soliciting funds. She wrote a letter to the chair of the Committee on Codes of Conduct of the Judicial Conference of the United States, who advised her on behalf of the Committee that she could remain on the _____ and attend fundraisers as long as she was not a speaker. The Subject Judge states that when her _____ spoke at the _____ fundraisers conducted after she became a judge, she “stood in the back of the group of attendees and never anywhere near [her] _____ or the children who would come

share their stories with those attending,” and that she also “did not encourage anyone at the fundraiser to bid on auction items.”

The Subject Judge notes that invitations to the fundraisers “were always sent to those who had previously donated” to the _____ before she became a judge and that those previously established donors included attorneys. She states that: “At no time after I became a judge . . . did I ever ask for money from anyone except my colleagues on the bench. After I became a judge I also did not solicit silent auction items from anyone.” The Subject Judge states that “all of the bankruptcy attorneys who sent in checks or were sponsors were friends of mine long before I became a judge,” and that while there are attorneys who appear before her who made donations, they had been making donations since the inception of the _____. She states, “I absolutely never asked any of them to contribute after I became a judge.”

To her response, the Subject Judge attached, among other things, a letter and other materials related to the _____ fundraisers that took place after the Subject Judge became a judge. Neither the letter nor any of the other fundraising materials was signed by or otherwise directly sent by the Subject Judge. She also included in her response a letter she wrote to the chair of the Committee on Codes of Conduct of the Judicial Conference of the United States in which she recognized that a judge should not solicit funds for an organization. Her letter to the Committee requested an advisory opinion on: (1) whether the _____ letterhead, which included her name and title, could be used when soliciting funds for the _____; and (2) whether she could attend fundraisers for the _____ as long as she was not a speaker, named guest of honor, or featured at the event.

The Subject Judge included in the materials she furnished a response from the chair of the Committee on Codes on Conduct, writing on behalf of the Committee. In that letter, the Committee advised her that the letterhead did not appear to violate the Code of Conduct for United States Judges, in part because the Subject Judge “will not be involved in the fund-raising and will not sign any of these fund-raising letters.” The Committee also concluded that the Subject Judge “may attend fund-raisers for _____ so long as [she was] not a speaker, guest of honor, or featured on the program.” It noted that although the Subject Judge was “intimately involved” in the fund, she was “neither involved in the fund-raising, nor using or permitting the use of the prestige of the judicial office for that purpose.” As a result, the Committee determined that there was “no impropriety under the Canons” of judicial ethics in the Subject Judge’s mere presence at fund-raising events.

Discussion

Canon 4B of the Code of Conduct provides that judges are permitted to be involved with a charitable organization as long as the organization itself is not likely be

engaged in proceedings that ordinarily come before the judge or to be regularly engaged in litigation and as long as the judge does not give the organization investment advice:

Civic and Charitable Activities. A judge may participate in and serve as an officer, director, trustee, or nonlegal advisor of a nonprofit civic, charitable, educational, religious, or social organization, subject to the following limitations:

- (1) A judge should not serve if it is likely that the organization will either be engaged in proceedings that would ordinarily come before the judge or be regularly engaged in adversary proceedings in any court.
- (2) A judge should not give investment advice to such an organization but may serve on its board of directors or trustees even though it has the responsibility for approving investment decisions.

Guide to Judiciary Policy (Guide), Vol. 2A, Ch. 2, Canon 4B. Complainant does not allege that the Subject Judge did anything related to _____ that violated Canon 4B's provisions limiting a judge's involvement with a charitable organization like _____.

Canon 4C allows a judge to assist a charitable organization in planning fund raising and allows her to be listed as an officer, director, or trustee of the organization. It also allows her to solicit funds for the organization from some other judges and from family members. It prohibits judges, however, from otherwise personally participating in fund-raising activities, soliciting funds for the organization, or using or permitting the use of the prestige of judicial office for that purpose. Canon 4C provides:

Fund Raising. A judge may assist nonprofit law-related, civic, charitable, educational, religious, or social organizations in planning fund-raising activities and may be listed as an officer, director, or trustee. A judge may solicit funds for such an organization from judges over whom the judge does not exercise supervisory or appellate authority and from members of the judge's family. Otherwise, a judge should not personally participate in fund-raising activities, solicit funds for any organization, or use or permit the use of the prestige of judicial office for that purpose. A judge should not personally participate in membership solicitation if the solicitation might reasonably be perceived as coercive or is essentially a fund-raising mechanism.

Id., Canon 4C.

Under the Rules for Judicial-Conduct and Judicial-Disability Proceedings of the Judicial Conference of the United States, “soliciting funds for organizations” is listed as “[c]ognizable misconduct.” JCDR 3(h)(1)(F). Complaints about the merits of a judge’s decisions and rulings, however, are not complaints about misconduct. See JCDR 3(h)(3)(A) (providing that “[c]ognizable misconduct . . . does not include . . . an allegation that is directly related to the merits of a decision or procedural ruling”). “An 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 pertain to the substance of the Subject Judge’s official actions, findings, and orders entered in the bankruptcy case in which Complainant was involved, the allegations are directly related to the merits of the Subject Judge’s decisions or procedural rulings.

Complainant’s allegations that the Subject Judge impermissibly solicited funds for _____ are nothing more than conclusory. He does not allege that he knows or heard from anyone with personal knowledge that the Subject Judge solicited funds for that _____. Instead, his assertion that she solicited funds appears to solely be based on the Subject Judge’s association with, and involvement as an officer of, _____. Under Canons 4B and 4C of the Code of Conduct, it was not improper for the Subject Judge to be involved in, and to be an officer of, _____.

The materials the Subject Judge provided with her response to the limited inquiry establish beyond any reasonable dispute that the Subject Judge did not impermissibly solicit funds for _____. Letters she provided establish that she sought guidance from the Committee on Codes of Conduct, which expressly advised her that because she was not involved in fund-raising for _____, it was permissible for her to be present at _____ fundraisers as long as she was not a speaker, guest of honor, or featured on the program. The other documents the Subject Judge provided show that, after becoming a judge, she did not sign or send materials soliciting funds for _____. Complainant presents no evidence to the contrary. For those reasons, with respect to Complainant’s claim that the Subject Judge solicited funds for _____, the limited inquiry has “demonstrate[d] that the allegations in the complaint lack any factual foundation or are conclusively refuted by objective evidence.” 28 U.S.C. § 352(b)(1)(B).

Complainant's remaining claims are based on allegations lacking sufficient evidence to raise an inference that the Subject Judge engaged in misconduct. Complainant's claim that the Subject Judge gave special treatment to _____ donors is based solely on decisions or procedural rulings with which Complainant disagrees. That is not sufficient to raise an inference of misconduct.

Conclusion

The allegations of this Complaint are "directly related to the merits of a decision or procedural ruling," JCDR 11(c)(1)(B), 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), and a limited inquiry has "demonstrate[d] that the allegations in the complaint lack any factual foundation or are conclusively refuted by objective evidence," 28 U.S.C. § 352(b)(1)(B). For those reasons, pursuant to Chapter 16 of Title 28 U.S.C. § 352(b)(1)(A)(ii), (iii) and (b)(1)(B), 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