

JUN 07 2016

David J. Smith
Clerk

CONFIDENTIAL

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

Judicial Complaint No. 11-16-90026

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 December 2009 Complainant filed a voluntary petition for Chapter 7 bankruptcy. A notice then was entered providing that Complainant had failed to file certain documents. In late December 2009, a creditor filed a Motion for Relief from Stay, arguing that it had an interest in certain real property and seeking relief from the automatic stay to allow it to take certain actions. In January 2010 the Subject Judge entered an order dismissing the case due to Complainant’s failure to file the documents necessary for the administration of the case. Complainant then filed a motion for reconsideration, arguing that he had filed the required documents. After a hearing, the Subject Judge granted the motion for reconsideration and reinstated the case.

In April 2010 the Subject Judge entered an order granting the creditor’s Motion for Relief from Stay, providing that the creditor could pursue its lawful in rem remedies as to the real property. Complainant filed a motion for reconsideration, asserting that he did not recall being served with a copy of the creditor’s motion, and he later filed an “Objection” to the Motion for Relief from Stay. After that, the creditor filed a notice withdrawing its Motion for Relief from Stay. In July 2010 the Subject Judge granted Complainant a discharge, and the case was closed. In November 2015 Complainant filed a motion to reopen the case, stating, among other things, that there had never been a ruling on his motion for reconsideration of the order granting the Motion for Relief from

Stay. The Subject Judge entered an order abating the motion to reopen due to Complainant's failure to pay the filing fee.

The record also shows that in May 2015 Complainant filed a voluntary petition for Chapter 13 bankruptcy and a Chapter 13 plan. In June 2015 the Subject Judge entered an order dismissing the case due to Complainant's failure to pay the filing fee. Complainant filed a motion for reconsideration, which the Subject Judge granted on June 16, 2015. Later that month, a creditor filed a Motion for Relief from Stay, seeking an order allowing it to foreclose on certain real property. In July 2015 the Chapter 13 Trustee filed a motion to dismiss the action due to Complainant's failure to maintain timely plan payments. In late July 2015 the Subject Judge entered an order granting the Motion for Relief from Stay, noting that Complainant did not file an appropriate response to the motion.

On August 4, 2015, Complainant filed a motion for reconsideration of the order granting the Motion for Relief from Stay, arguing in part that he had not received the motion until that day. A couple of days later, a notice was filed providing that a hearing would be held on the motion for reconsideration on September 2, 2015. On August 17, 2015, the Subject Judge entered an order granting the Trustee's motion to dismiss, finding that Complainant failed to become current in payments and failed to respond the motion to dismiss, and the case was closed in October 2015. The next month, Complainant filed a motion to reopen the case, arguing, among other things, that there had never been a hearing or a ruling on his motion for reconsideration of the order granting the Motion for Relief from Stay. The Subject Judge entered an order abating the motion to reopen due to Complainant's failure to pay the filing fee.

The record shows that in October 2015 Complainant filed another voluntary petition for Chapter 13 bankruptcy, and he later filed an amended Chapter 13 plan. In November 2015 he filed a Motion to Extend the Automatic Stay, arguing that a change in his financial situation warranted an extension of the automatic stay. After a hearing, the Subject Judge denied the motion, finding that it was filed in an attempt to delay a creditor's foreclosure efforts in state court. Also in November 2015, the Chapter 13 Trustee filed a motion to dismiss the case due to Complainant's failure to maintain timely plan payments. The next month, the Subject Judge granted the motion to dismiss, and the case was closed in February 2016.

Complaint

In his Complaint of Judicial Misconduct or Disability, Complainant alleges that the Subject Judge and others "systematically stampeded" his due process rights, and that the Subject Judge "colluded" with others to deny him due process. Complainant then generally describes the proceedings in his initial case, asserts that he was never notified of a hearing on the Motion for Release from Stay, and states that he was "not sure" how

the Subject Judge ruled on the motion in light of the discharge. Complainant states that in his first Chapter 13 case, he again was not notified of a hearing on a Motion for Release from Stay until after the motion had been granted. He notes that he filed a motion for reconsideration, but that the Subject Judge did not rule on the motion because he dismissed the case due to Complainant's failure to make payments to the Trustee. Complainant states, "This dismissal was unfair because I used the Pro Se Clinic to guide me through the complexities of a Chapter 13 filing."

Complainant then appears to allege that a plaintiff was "granted a summary judgment" in a state court action "due to" the Subject Judge's release of Complainant's home from the stay without Complainant's "knowledge of hearing therefore no defense was presented." He states that the Subject Judge "never allowed a fair lay out of the facts," which led to Complainant's home being sold in the state court. Complainant then states that at a hearing in November 2015 the Subject Judge denied his motion to extend the stay based on an incorrect statement by the "Plaintiff" regarding whether "they have a summary judgment," and Complainant asserts that the transcript "had been change[d] to show Plaintiff" made a different statement. Finally, Complainant discusses certain state court proceedings and raises allegations relating to individuals other than the Subject Judge.

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 cases, 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 issues, he provides no credible facts or evidence in support of his allegations that the Subject Judge 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**.

A handwritten signature in black ink, appearing to read "E. James", written over a horizontal line.

Chief Judge