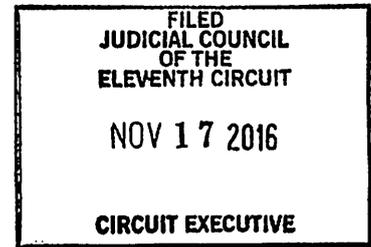


FOR THE JUDICIAL COUNCIL
OF THE ELEVENTH CIRCUIT

111690050



IN RE: COMPLAINT OF JUDICIAL
MISCONDUCT OR DISABILITY

ON PETITION FOR REVIEW*

Before: TJOFLAT, HULL, MARCUS, WILSON, WILLIAM 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, Merryday, and Land, the order of Chief Judge Ed Carnes filed on 25 August 2016, and of the petition for review filed by the complainant on 26 September 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.

AUG 25 2016

David J. Smith
Clerk

CONFIDENTIAL

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

Judicial Complaint No. 11-16-90050

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 her Complaint, she filed two supplemental statements. The filing of the supplemental statements is approved. See 11th Cir. JCDR 6.7.

Background

The record shows that in May 2015 Complainant filed a voluntary petition for Chapter 13 bankruptcy and an initial Chapter 13 plan. In August 2015 the Subject Judge entered an order granting relief from the automatic stay for Complainant and her former husband, _____, to litigate issues relating to their divorce proceedings in state court. In October 2015 _____, through his attorney, _____, filed a motion to dismiss the bankruptcy case, alleging that Complainant had filed it in bad faith and in order to get the bankruptcy court to “change the rulings of the family court.” On January 12, 2016, Complainant filed a fourteenth amended Chapter 13 plan. On January 14, 2016, the Subject Judge entered an order granting _____ motion to strike proof of claim.

A hearing was held before the Subject Judge on January 14, 2016. The next day, Complainant filed a fifteenth amended Chapter 13 plan and a motion to recuse the Subject Judge and to reinstate the case, arguing that he unfairly dismissed the case without allowing her to correct a mathematical error. On January 19, 2016, the Subject Judge entered an order denying confirmation of the fourteenth amended Chapter 13 plan because of calculation errors and dismissing the case with prejudice for 180 days. On

January 26, 2016, Complainant filed a motion to vacate the Subject Judge's dismissal order and to recuse the Subject Judge. She also filed a notice of appeal (the First Appeal) and a motion to appeal in forma pauperis (IFP). In early February 2016 she filed a supplemental motion to vacate the dismissal order and to recuse the Subject Judge.

On February 12, 2016, the Subject Judge issued an order denying various motions for lack of jurisdiction, including Complainant's motion to reinstate the case and recuse the Subject Judge and her motion to vacate the dismissal order, finding that the court was divested of jurisdiction over those motions when Complainant filed her notice of appeal. The Subject Judge allowed Complainant to appeal IFP. Several days later, the Subject Judge entered an order dismissing Complainant's appeal because she failed to timely file the designation of items for the record or statement of the issues as required by Bankruptcy Rule 8009. On February 19, 2016, Complainant filed a motion to vacate the order dismissing her appeal and a motion to stay pending appeal. She then appealed the Subject Judge's February 12, 2016 order denying various motions (the Second Appeal). She also appealed the order dismissing her First Appeal (the Third Appeal). She later filed an additional motion to vacate the order dismissing her appeal.

On March 9, 2016, the Subject Judge entered an order denying four of Complainant's motions without prejudice, including her motions to vacate, finding the court lacked jurisdiction in light of the pending appeals. The order stated that no further activity was warranted in the case until the district court fully adjudicated the issues raised in the Second and Third Appeals. About a week later, in the Second Appeal, the district court entered an order: (1) noting that Complainant sought to have the bankruptcy court reconsider several motions that it had denied in February 2016; (2) granting Complainant's motion to relinquish jurisdiction to the bankruptcy court; and (3) dismissing the appeal without prejudice.

On April 6, 2016, Complainant filed with the bankruptcy court a motion for a hearing on certain motions. On the same day, the Subject Judge entered an order denying the request for a hearing because the motions had been ruled upon and because the Third Appeal remained pending. The Subject Judge also clarified that Complainant's motion to appeal IFP was filed only as to the First Appeal, and that if she filed any further appeals, she would be required to pay the full filing fee. Later that month, Complainant filed a motion to appeal IFP and a motion to set a hearing on certain motions.

On April 25, 2016, in the Third Appeal, the district court entered an order: (1) determining that the appeal should be dismissed for the Subject Judge to take further action on Complainant's February 19, 2016 motion to vacate; (2) dismissing the appeal for lack of jurisdiction, finding that Complainant's notice of appeal would not become effective until the bankruptcy court ruled on the motion to vacate; and (3) directing the bankruptcy court to hold further proceedings. After that, the Subject Judge entered an

order stating that Complainant's motion to appeal IFP and motion to set a hearing would be considered at a hearing on May 19, 2016.

On May 6, 2016, in the First Appeal, the district court denied without prejudice various motions Complainant had filed, directed the bankruptcy court to hold further proceedings, and noted that the appeal remained closed. Complainant filed in the bankruptcy court a motion to continue the hearing, and on May 17, 2016, the Subject Judge set that motion for the hearing to be held two days later. After that, Complainant filed a motion to recuse the Subject Judge, arguing that three district court orders had directed the Subject Judge to schedule a hearing on certain motions, and he had shown bias against Complainant by refusing to schedule a hearing.

On May 23, 2016, the Subject Judge entered an order noting that, at the hearing on May 19, 2016, the court considered the motions set for the hearing as well as all of the prior motions that had been denied for lack of jurisdiction. The Subject Judge determined that the prior denied motions should remain denied as they were without merit, and that the case was properly dismissed upon denial of the fourteenth amended plan, stating, "If a Debtor is given fourteen chances and cannot put forth a confirmable plan, then it is appropriate for the Court to dismiss the case." He also found that Complainant "insisted in attempting to litigate state court issues involving her ex-husband . . . and relitigate state court orders from the divorce proceeding, which is not a proper use of the bankruptcy court system." After that, Complainant filed a motion to reopen the case and a motion to vacate the order, which the Subject Judge denied.

Complaint

In her Complaint of Judicial Misconduct or Disability, Complainant alleges that the Subject Judge has a personal bias or prejudice against her or in favor of a creditor, and she asserts that multiple district court judges directed the Subject Judge to hear her pending motions, but he refused to do so. Complainant contends that the Subject Judge should be disqualified from her case, and she states that she fears he will not set certain motions for a hearing, and that, if he does, he would be biased and prejudiced at the hearing, the hearing would not be fair, and the motions would be denied. Complainant states that she believes the Subject Judge is prejudiced against her because she filed a motion to recuse him and filed the multiple appeals when he would not hear pending motions.

Complainant discusses the proceedings before the Subject Judge and takes issue with various rulings. Among other things, Complainant contends that the Subject Judge unfairly dismissed the case on January 14, 2016, instead of allowing her to file an amended plan the next day, and that he improperly dismissed her First Appeal for failure to timely file the designation of items. She states that at the January 14, 2016 hearing, _____ spoke to the Subject Judge "without the debtor being at microphone," which

constituted an improper ex parte communication. Complainant states that she could hear _____ “continuing to talk to” the Subject Judge, but she could not stop him because she was away from the microphone trying to talk to the trustee. She states that by the time she got back to the microphone, the Subject Judge “was stating that he was going to dismiss case.”

Complainant also takes issue with the Subject Judge’s April 2016 order finding that the fee was waived for only one appeal, and she takes issue with his decision not to take action on motions while appeals were pending, noting that certain motions were filed before the appeals were filed. Complainant contends that the Subject Judge showed prejudice against her at the May 19, 2016 hearing when he told her “it has been too long” to rule on certain motions and that she “cannot tell court what to do.” Finally, Complainant takes issue with the actions of individuals other than the Subject Judge.

Supplements

In her first supplemental statement, Complainant asserts that three district court judges directed the Subject Judge to hold further proceedings on her motions, but the Subject Judge denied those motions for lack of jurisdiction. She also appears to complain that the Subject Judge considered certain matters at a hearing that was supposed to be held on other matters.

In her second supplemental statement, Complainant reiterates her claim that the Subject Judge failed to schedule a hearing on certain motions and did not hear the motions even though three district court judges directed him to do so. She also complains that the Subject Judge did not provide her with adequate notice of a hearing. Complainant states that the Subject Judge “made many mistakes” in her bankruptcy case, and she contends that: (1) the Subject Judge’s January 2016 order allowing a creditor to withdraw proof of claim was not based on any findings; (2) at the January 14, 2016 hearing, the Subject Judge “only allowed creditor to talk”; and (3) the Subject Judge “should not dismiss” one of her appeals because it did not take effect until he heard and disposed of pending motions. Finally, Complainant raises allegations against judges other than the Subject Judge.

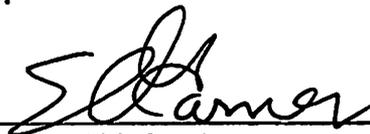
Discussion

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, rulings, and orders entered in the case, including his decision not to recuse, 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, she provides no credible facts or evidence in support of her claims that the Subject Judge was biased or prejudiced against her or in favor of a creditor, had improper ex parte communications, 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