

OCT 14 2016

David J. Smith
Clerk

CONFIDENTIAL

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

Judicial Complaint No. 11-16-90066

IN THE MATTER OF A COMPLAINT FILED BY _____

IN RE: The Complaint of _____ against _____, U.S. District Judge for the U.S. District 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 District 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 August 2009 a company filed a voluntary petition for Chapter 11 Bankruptcy, and Complainant was the “managing member” of the company. After various proceedings, the case was converted to a Chapter 7 case. In November 2015 a bankruptcy judge issued a Final Decree discharging the trustee and closing the case, and Complainant filed a notice of appeal.

The record shows that on December 1, 2015, Complainant filed in the district court a pro se motion to be served by email. On December 22, 2015, the former trustee filed a motion to remove the trustee and/or any reference to the United States Trustee as the designated appellee, stating that nothing in the “Appellant Designation” filed in the bankruptcy case related to the former trustee. On January 22, 2016, Complainant, through counsel, filed an unopposed motion for a 30-day extension of time to file the initial brief, noting that the brief was due on January 29, 2016.

On January 28, 2016, the Subject Judge entered an order granting the motion to remove the trustee as the appellee and granting Complainant’s motion for an extension of time. The caption of the order listed Complainant as “Defendant.” On the same day, the Subject Judge denied as moot Complainant’s motion to be served by email, noting that he was now represented by counsel. A few days later, the Subject Judge entered an amended order granting the motion to remove the trustee as the appellee and granting the motion for an extension, providing Complainant until February 29, 2016 to file his brief.

The caption of the order listed Complainant as “Appellant.” On February 29, 2016, Complainant filed a motion for a one-day extension of time to file his brief, which the Subject Judge granted. Complainant filed his brief the next day. In April 2016 Complainant filed a “Motion for Oral Argument,” and in July 2016 he filed a “Notice of Pendency” in which he requested that the court grant him the relief sought in the brief or hold oral argument.

Complaint

In his Complaint of Judicial Misconduct or Disability, Complainant notes that the Subject Judge is _____ years old, and he states that he believes the Subject Judge “is suffering from Dementia.” In support, Complainant states that he filed a motion to be served by email on December 1, 2015, and that, although he “constantly called” the Subject Judge’s clerk, the Subject Judge did not rule on the motion for two months. Complainant also notes that on January 22, 2016, his attorney filed a motion for an extension of time to file the brief, and that after the attorney “repeatedly” called the Subject Judge’s clerk, the Subject Judge issued an order on January 28, 2016, the day before the brief was due.

Complainant states that after the Subject Judge ruled on the motion to remove the trustee, he “removed the Trustee and changed [Complainant’s] name from Appellant to Defendant,” and then “removed [Complainant] as Defendant and changed [him] back to Appellant” after “numerous phone calls.” Complainant contends that his brief included a “Motion for Hearing” and that he filed a separate motion for a hearing in April 2016, but that the Subject Judge “has refused to rule” on those motions. Complainant states that he knows that the Subject Judge would not rule on a motion to recuse if it was filed. Complainant then states, “I believe that [the Subject Judge’s] advanced age, his changing me from Appellant to Defendant, and his disregard for ANY of my numerous Motions certainly would lead to an inquiry of his mental status.” 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 and orders entered in the case, 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 allegation that the Subject Judge suffers from dementia or any other disability.

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