

JAN 26 2017

David J. Smith
Clerk

CONFIDENTIAL

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

Judicial Complaint No. 11-16-90111

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 July 2013 Complainant filed a voluntary petition for Chapter 13 bankruptcy. After that, _____ filed a notice of appearance as counsel for Complainant. In April 2014 the Subject Judge issued an order dismissing the case without prejudice, finding that the Chapter 13 Plan did not meet the requirements for confirmation. The order also provided that compensation of Complainant’s counsel was to be paid from Trust Funds.

The record shows that in August 2014 Complainant filed a pro se voluntary petition for Chapter 13 bankruptcy. In December 2014 she filed a letter in which she stated that _____ “double paid herself with [Complainant’s] trustee funds,” and the letter was docketed as a motion for disgorgement of attorney’s fees. After that, _____ filed an “Affidavit in Support of Attorneys Fees” in connection with Complainant’s previous Chapter 13 case, and she noted that Complainant had filed a grievance against her with a state bar, which had been dismissed. In March 2015 the Subject Judge issued an amended order denying confirmation because the Chapter 13 Plan did not meet the requirements for confirmation and dismissing the case. In December 2015, after a hearing, the Subject Judge denied the motion to disgorge attorney’s fees, finding that _____ met her burden of proving her entitlement to the fees.

Complaint

In her Complaint of Judicial Misconduct or Disability, Complainant states that the Subject Judge released Complainant's trustee funds to _____. Complainant asserts that the funds were released even though Complainant had filed a grievance against _____ "for not refiling" a certain case, and she alleges that _____ has been "disbarred." Complainant also states that the Subject Judge "promised" her legal aid, but later "took back her promise" after realizing that Complainant had two properties in the state.


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.

All of Complainant's allegations concern the substance of the Subject Judge's official actions, findings, and orders entered in the cases, and the allegations are directly related to the merits of the Subject Judge's decisions or procedural rulings.

The allegations of this Complaint are "directly related to the merits of a decision or procedural ruling," JCDR 11(c)(1)(B). For that reason, pursuant to Chapter 16 of Title 28 U.S.C. § 352(b)(1)(A)(ii) and Rule 11(c)(1)(B) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings of the Judicial Conference of the United States, this Complaint is **DISMISSED**.



Chief Judge