

FEB 01 2017

David J. Smith
Clerk

CONFIDENTIAL

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

Judicial Complaint No. 11-16-90125

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 a supplemental statement. The filing of the supplemental statement is permitted. See 11th Cir. JCDR 6.7.

Background

The record shows that in December 2006 Complainant filed a voluntary petition for Chapter 7 Bankruptcy. In April 2007 the Subject Judge entered an order granting Complainant a discharge. In July 2008 the Subject Judge issued a final decree discharging the trustee, and the case was closed. In September 2015 the trustee filed a motion to reopen the case in order to administer an asset, specifically, Complainant’s “Mass Tort claim, which stemmed from an injury which occurred pre-petition.” The Subject Judge granted the motion to reopen, finding that good cause had been shown.

After that, Complainant filed a document in which she sought to have the case re-closed. The next day, the trustee filed a motion to approve a settlement of Complainant’s tort claim. Following a hearing, in May 2016 the Subject Judge denied Complainant’s motion to re-close the case, generally finding that the trustee appropriately reopened the case. The Subject Judge also issued an order granting the trustee’s motion to approve the settlement and authorizing the trustee to act in accordance with the terms set forth in the settlement.

In August 2016 Complainant filed a letter that was docketed as a motion to receive funds from the settlement. After a hearing, the Subject Judge denied the motion, finding it was “not well-founded under the applicable distribution provisions of the Bankruptcy Code.” Complainant then filed a motion to reconsider the order reopening the bankruptcy case, which the Subject Judge denied.

Complaint

In her Complaint of Judicial Misconduct or Disability, Complainant takes issue with the reopening of her bankruptcy case, and she states that the trustee “has done a mis-justice” by telling the Subject Judge that Complainant would not receive any money on her settlement, while the trustee “is getting thousands.” Complainant states that “for this reason” she wants “to go to a jury and not have [the Subject Judge] involved. This is usu[ry]!”

Complainant states that the Subject Judge allowed the trustee to keep Complainant’s money, and she asserts that the Subject Judge told the trustee “to make it right” but “did not follow through with his court order.” Finally, Complainant states that the Subject Judge’s office sent her a letter “on the wrong letterhead,” which caused her to call the wrong telephone number, and that she received no apology after a U.S. Marshal came to her house. She attached various documents to her Complaint.

Supplement

In her supplemental statement, Complainant states that the Subject Judge “will not listen to reason” and “refuses [her] any monies” despite that the trustee has additional money from selling one of Complainant’s assets. Complainant also takes issue with the actions of the trustee. She attached various documents to her supplement.

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, 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 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**.



Chief Judge