

FILED
U.S. COURT OF APPEALS
ELEVENTH CIRCUIT

MAY 09 2018

David J. Smith
Clerk

CONFIDENTIAL

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

Judicial Complaint No. 11-17-90084

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 May 2017 Complainant filed an Involuntary Petition for
Chapter 7 Bankruptcy. After a hearing in June 2017, the Subject Judge entered an order
construing the Involuntary Chapter 7 Petition as a Voluntary Chapter 7 Petition and
directing Complainant to file certain documents. Complainant then filed, among other
things, a Voluntary Petition for Chapter 7 Bankruptcy.

In July 2017 the Subject Judge issued an order directing Complainant to show
cause as to why the case should not be dismissed with a 180-day prejudice period. The
order stated that Complainant had filed a previous bankruptcy case that was dismissed in
June 2017 with a 180-day prejudice period, and that if Complainant had filed a voluntary
petition in June 2017, it would have violated the order entered in the previous case. After
a hearing in August 2017, the Subject Judge entered an order dismissing the case with a
180-day prejudice period.

Complaint

In her Complaint of Judicial Misconduct or Disability, Complainant states that at
the June 2017 hearing, the Subject Judge asked her about the Involuntary Chapter 7
Petition she filed, and that after she responded, the Subject Judge made a “puzzling facial
expression,” which caused her to feel “intimidated” and to request that the case be

converted to an individual voluntary Chapter 7 case. She states, "He then commented that he feels better with the Bankruptcy chapter 7 Voluntary Individual."

Complainant states that at the August 2017 hearing, the Subject Judge "called the Bankruptcy that [she] previously filed 'phony' and related the bank[']s position as 'correct.'" She states that she felt the Subject Judge "was having prejudice against [her] from the start." Complainant states that she told the Subject Judge she did not know about the 180-day prejudice period from her previous case, and that the Subject Judge "said that he believes that I knew about it and just wanted to go around the system. He falsely accused me."

Complainant states that she informed the Subject Judge that opposing counsel violated her due process rights, but the Subject Judge still ordered that her case be dismissed. She states that she "feel[s] like the Judge handed me over to the opponent Counsel so I can be at his mercy." She attached documents to her 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, 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. Complainant's remaining claims are based on allegations lacking sufficient evidence to raise an inference that the Subject Judge was prejudiced against her, "falsely accused" her, 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**.

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

Chief Judge