

JUL 02 2018

David J. Smith
Clerk

CONFIDENTIAL

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

Judicial Complaint No. 11-17-90096

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 on September 22, 2017, _____ (the debtor) filed a petition for Chapter 11 bankruptcy, and Complainant signed the petition as the Managing Member of the debtor. On the same day, the court issued a deficiency notice stating that a business entity must be represented by counsel and that counsel had to be obtained by September 29, 2017. A few days later, _____ (_____) filed a Notice of Related Case and Motion to Transfer in which it alleged that Complainant violated bankruptcy court orders issued in another case and requested that the case be transferred to the Subject Judge. The next day, a bankruptcy judge granted the motion to transfer, and the case was transferred to the Subject Judge as the presiding bankruptcy judge.

On September 27, 2017, the debtor filed a motion to vacate the order transferring the case and to disqualify the Subject Judge, alleging that the Subject Judge was biased and prejudiced against Complainant. That same day, _____ filed a motion to dismiss the case, for relief from the automatic stay, and for sanctions against Complainant.

_____ argued that Complainant willfully violated previous court orders preventing him from filing bankruptcy proceedings for a certain time by creating a “sham LLC debtor,” transferring property to the debtor, and then filing for bankruptcy in an attempt to delay a foreclosure action on the property. On September 29, 2017, the debtor filed a motion for an extension of time to retain counsel. The debtor also filed an objection to _____ motion and moved for sanctions against _____ counsel.

After a hearing on October 4, 2017, the debtor filed, among other things, a notice of appeal, a motion to stay pending appeal, and a statement of issues on appeal. On October 10, 2017, the Subject Judge issued an order denying the debtor's motion for extension of time to retain counsel. _____ then filed a motion to strike the debtor's appeal-related documents because they were filed by a non-attorney on behalf of a limited liability company. After that, the debtor filed a motion for sanctions against _____ counsel.

On October 24, 2017, the Subject Judge issued an order finding that: (1) Complainant filed the case in bad faith for the purpose of avoiding court orders in a previous case that prohibiting him from filing for bankruptcy until December 2017; and (2) the case was part of a scheme to hinder, delay, or defraud _____. The order, among other things: (1) dismissed the case nunc pro tunc to the petition date; (2) dismissed the case with prejudice for two years to the filing of another bankruptcy petition by the debtor; (3) extended the prejudice period with respect to Complainant filing for personal bankruptcy for an additional two years; and (4) denied the debtor's motion to vacate the order transferring the case and to disqualify the Subject Judge, finding there had been no showing of bias or prejudice. In November 2017 the Subject Judge entered an order granting _____ motion to strike the appeal-related filings, denying the debtor's motion for stay, and denying the debtor's motion to sanction _____ counsel. The case was closed in March 2018.

Complaint

Complainant's Complaint of Judicial Misconduct or Disability consists of various case-related filings, including a statement of issues in which he asserts that the Subject Judge erred and/or "abused his Judicial powers" in various respects in the bankruptcy case and takes issue with the Subject Judge's rulings in the case. Complainant alleges, among other things, that the Subject Judge: (1) violated Complainant's "constitutional rights to the equal protection of the federal Bankruptcy laws"; (2) acted with "hateful and bias and prejudice arrogant abuse of power" by sanctioning Complainant "with a two year renewal where he can no longer file for bankruptcy protection totaling four years . . ."; and (3) is biased, "pro creditor," and "loves to take the debtors['] moneys and then deprive them of their rights"

Complainant also states that the Subject Judge "grossly abuse[d] his discretion and powers in denying the motion for his own recusal off the case and denying all other matters with prejudice serving the creditors wishes and wrongfully sanctioning the debtors in an abusive and unconstitutional unlawful ways [sic]" Complainant asserts that the bankruptcy action should be stayed and the Subject Judge should be forced to retire immediately. In another document, Complainant alleges that the Subject Judge, among other things: (1) conspired with an attorney to dismiss Complainant's case

without giving him an opportunity to hire counsel; (2) illegally dismissed the case and imposed sanctions on Complainant “with no legal standing to do so, all out of hate and malice and evilness”; (3) defrauded Complainant out of filing fees; and (4) issued orders without jurisdiction.

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 that Complainant challenges, he provides no credible facts or evidence in support of his claims that the Subject Judge was biased, acted with an illicit or improper motive, was part of a conspiracy, 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