

CONFIDENTIAL
BEFORE THE CHIEF JUDGE
OF THE ELEVENTH JUDICIAL CIRCUIT

Judicial Complaint No. 11-15-90073

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

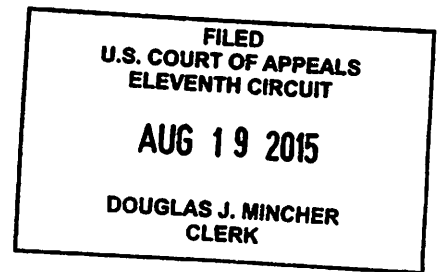
_____ (“Complainant”) has filed this Complaint against United States
Bankruptcy Judge _____ (the “Subject Judge”), pursuant to Chapter 16 of Title 28
U.S.C. § 351(a) and the Rules for Judicial-Conduct and Judicial-Disability Proceedings of
the Judicial Conference of the United States (“JCDR”).

As an initial matter, after Complainant filed his Complaint, he filed a supplemental
statement. The filing of that supplemental statement is approved. See 11th Cir. JCDR
6.7.

Background

The record shows that in January 2009 Complainant filed a pro se voluntary
petition for Chapter 7 bankruptcy. In April 2009 Complainant initiated an adversary
proceeding against various individuals and entities, asking the court to hold the
defendants in contempt and to impose sanctions on them and to award damages to him.
On July 1, 2009, the Subject Judge entered an order granting the defendants’ motion to
dismiss in part and imposing sanctions on Complainant. After reviewing Complainant’s
“history of vexatious state court litigation,” the Subject Judge found that Complainant did
not have standing to bring the cause of action. The Subject Judge also found that
Complainant’s actions in filing the adversary proceeding were in bad faith, and he
ordered that Complainant was prohibited from filing any adversary proceeding or
contested matter in the court on a pro se basis without prior court approval. In October
2009 the lead bankruptcy case was closed without entry of discharge because
Complainant had failed to file a required form.

The record also shows that in April 2015 Complainant again filed a pro se
voluntary petition for Chapter 7 bankruptcy. On June 8, 2015, he filed a “Motion for



Judicial Disqualification and to Vacate and Void [the Subject Judge's] July 1, 2009 Order." In that motion Complainant alleged that the Subject Judge would not allow him to speak, explain, or object at two hearings on or before July 1, 2009, and he complains that at the hearings the Subject Judge "referenced and made an allegory" to the character _____ from the _____ novel, suggesting that, like _____, Complainant was "fighting with windmills." Complainant noted that an attorney, _____,¹ stated in an affidavit that he had conferred with the Subject Judge's law clerk, _____, and Complainant "recalls that _____ testified in State Court that he had spent about an hour conferring with [the Subject Judge's] Law Clerk, _____." Complainant asserted that the facts required the Subject Judge's disqualification from the case, and that until he was disqualified, Complainant would not get a fair and impartial hearing. Complainant also requested that the Subject Judge's July 1, 2009 order be vacated.

Complainant attached as an exhibit to his motion an affidavit by _____ dated April 30, 2010. In it _____ stated that he was an attorney who had represented himself, his former law firm, and a company in numerous proceedings filed by Complainant. In one paragraph of the affidavit, _____ stated that in May 2009, he had spent a total of 7 hours "dealing with appellate issues, and bankruptcy matters," and that, as part of that time, he "conferred with the Bankruptcy Court's law clerk, _____"

The Subject Judge denied the Motion for Judicial Disqualification, noting that "[n]owhere in the _____ Affidavit does _____ state the duration of the conversation he had with the Court's former law clerk, _____, let alone what they talked about." The Subject Judge concluded,

The Court is unaware of any attempt at ex parte communication by _____ with _____ and is satisfied that the entry of the 2009 Order was not the result of any inappropriate communication between _____ and _____ but was instead the result of this Court's analysis of the facts before it and the application of those facts to the relevant law.

The next day, Complainant filed a "Supplemental Motion for Judicial Disqualification . . ." in which he argued that the alleged ex parte communication was not docketed by _____, contrary to the Subject Judge's policy on ex parte communications, which "lends credence" to Complainant's allegations. Complainant also stated that the Subject Judge "ignores and does not explain why" he referenced _____ at certain hearings and would not permit Complainant to speak or respond. On the same day, Complainant filed a Motion for Stay in which he asserted that it was a denial of his constitutional rights and prejudicial to him for the court to consider any

¹ The record shows that _____ participated as an attorney in the 2009 lead bankruptcy case, and was a defendant in a different adversary proceeding filed by Complainant in 2009.

motions while a Complaint of Judicial Misconduct or Disability that he had filed against the Subject Judge was pending. In July 2015 the Subject Judge construed the Supplemental Motion for Judicial Disqualification as a motion for reconsideration of the Subject Judge's initial order denying disqualification and denied it.

Complaint

Complainant attached to his Complaint of Judicial Misconduct or Disability the Motion for Judicial Disqualification and Supplemental Motion for Judicial Disqualification in which he argued that the Subject Judge should disqualify himself and vacate the July 1, 2009 order because of an allegedly improper ex parte communication between _____ and _____. In those documents, Complainant asserts that the Subject Judge referred to the literary character _____ and would not allow Complainant to speak at two hearings. Complainant attached other documents to his Complaint.

Supplement

Complainant's supplemental statement consists of an "Emergency Verified Motion for Stay" in which he states that he will be evicted and become homeless if he is not granted stay relief. He requests that this Court stay the bankruptcy proceedings pending a decision on his Complaint of Judicial Misconduct or Disability. Complainant attached various other documents to his supplemental statement.

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.

Canon 3A(4) of the Code of Conduct for United States Judges authorizes judges "when circumstances require it, [to] permit ex parte communication for scheduling,

administrative, or emergency purposes, but only if the ex parte communication does not address substantive matters and the judge reasonably believes that no party will gain a procedural, substantive, or tactical advantage as a result of the ex parte communication” Guide to Judiciary Policy, Vol. 2A, Ch. 2, Canon 3A(4)(b); see also Ferguson v. Sec’y for Dep’t of Corr., 580 F.3d 1183, 1220 n.52 (11th Cir. 2009) (noting that, “as a matter of legal ethics, it is well-established that an ex parte communication which does not concern the merits of the case is permissible” (quotation marks omitted)).

Complainant has presented no evidence that any communication between an attorney and the Subject Judge’s law clerk involved the merits of his case or was an impermissible ex parte communication.

To the extent Complainant’s allegations concern the substance of the Subject Judge’s official actions, findings, and orders entered in the cases, the allegations are directly related to the merits of the Subject Judge’s decisions or procedural rulings. Complainant’s remaining allegations are based on insufficient evidence to raise an inference that any communication between an attorney and the Subject Judge’s law clerk was improper or 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