

FILED
JUDICIAL COUNCIL
OF THE
ELEVENTH CIRCUIT

JAN 20 2016

CIRCUIT EXECUTIVE

**FOR THE JUDICIAL COUNCIL
OF THE ELEVENTH CIRCUIT**

111590090

**IN RE: COMPLAINT OF JUDICIAL
MISCONDUCT OR DISABILITY**

ON PETITION FOR REVIEW*

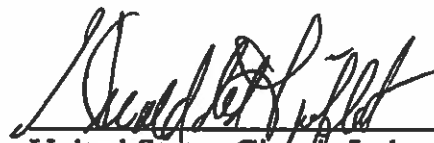
Before: TJOFLAT, HULL, MARCUS, WILSON, PRYOR, MARTIN, JORDAN, ROSENBAUM, and JULIE CARNES, Circuit Judges; MOORE, MERRYDAY, THRASH, BOWDRE, LAND, STEELE, RODGERS, WATKINS, and WOOD, Chief District Judges.

Upon consideration of the petitioner's complaint by a review panel consisting of Judges Tjoflat, Wilson, Pryor, Steele, and Rodgers, the order of Chief Judge Ed Carnes filed on 6 October 2015, and of the petition for review filed by the complainant on 10 November 2015, with no non-disqualified judge on the Judicial Council Review Panel having requested that this matter be placed on the agenda of a meeting of the Judicial Council,

The Judicial Council Review Panel hereby determines that the disposition of this matter was proper and said disposition is hereby **AFFIRMED**.

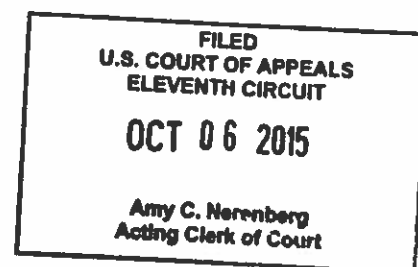
The foregoing actions are **APPROVED**.

FOR THE JUDICIAL COUNCIL:


United States Circuit Judge

* Chief Circuit Judge Ed Carnes did not take part in the review of this petition.

CONFIDENTIAL
BEFORE THE CHIEF JUDGE
OF THE ELEVENTH JUDICIAL CIRCUIT



Judicial Complaint No. 11-15-90090

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 three supplemental statements. The filing of those supplemental statements is approved. See 11th Cir. JCDR 6.7.

Background

The record shows that in November 2014 _____ filed a voluntary petition for Chapter 11 bankruptcy. _____ listed Complainant as a creditor holding an unsecured claim and listed as personal property a final judgment against Complainant.

In January 2015 Complainant filed a complaint against _____, which was docketed as an adversary proceeding, and in the complaint, he raised numerous claims against the president of _____ and others. In April 2015 Complainant filed a motion for summary judgment, arguing that _____ had failed to file an answer within the required time. At a hearing on April 9, 2015, the Subject Judge stated that he would deny the motion for summary judgment, primarily because he did not know what Complainant was asking for in his complaint. The Subject Judge suggested that Complainant file an amended complaint and explained that it should include general allegations to support the specific requests for relief. After the hearing, the Subject Judge entered an order denying the motion for summary judgment for the reasons stated at the hearing. After a status conference on July 9, 2015, the Subject Judge dismissed the adversary proceeding with prejudice for the reasons stated at the hearing.

Meanwhile, in late March 2015 in the main bankruptcy case, Complainant filed a "Motion for Production, Compensation, and an Order Enforcing Compliance" with a state statute. After a hearing on April 23, 2015, the Subject Judge denied the motion for reasons stated at that hearing. Complainant then filed other motions seeking various types of relief, arguing, among other things, that _____ Board of Directors was invalid.

At a July 9, 2015 hearing on those motions, Complainant generally argued that _____ Board of Directors was invalid. The Subject Judge stated that he did not know what Complainant was asking for in his requests for relief and informed him that he could serve valid discovery on the debtor to obtain the information he was seeking. The Subject Judge then determined that Complainant's motions would be denied, explaining that they did not clearly present claims for appropriate relief. The Subject Judge also encouraged counsel for _____ to provide Complainant information about the board, and the Subject Judge noted that he had not seen anything to cause him to believe that the board was not proper. After the July 9 hearing, the Subject Judge entered an order denying Complainant's motions for the reasons stated at that hearing.

After that, Complainant filed a motion for the court to appoint a trustee and a motion for the Subject Judge to show cause why he should not be charged with racketeering in which Complainant generally took issue with the Subject Judge's orders denying various motions. On August 18, 2015, Complainant moved to stay the implementation of "any plan and disclosure statement" until _____ proved that it had a duly elected board. A few days later, after a hearing, the Subject Judge denied the motion to stay for the reasons stated at the hearing. In late August 2015 the Subject Judge denied Complainant's motion to appoint a trustee and motion for the court to show cause. In September 2015 the Subject Judge entered an order confirming a Chapter 11 plan of reorganization.

Complaint

In his Complaint of Judicial Misconduct or Disability, Complainant alleges that in the adversary proceeding, the Subject Judge "violated Rule 55" in his July 2015 order "dismissing" the motion for summary judgment because _____ failed to file an answer or a motion to dismiss by the due date. Complainant then discusses the merits of various arguments and alleges that the Subject Judge "covered up" certain claims. Complainant asserts that the Subject Judge "refus[ed] to execute his oath to uphold our laws" and "betrayed his public trust," and Complainant requests various types of relief, including that the Subject Judge be charged with racketeering.

Supplements

In his first supplemental statement, Complainant generally discusses the merits of various arguments, takes issue with the actions of _____ Board of Directors, and takes issue with the Subject Judge's orders in the bankruptcy proceedings. Complainant specifically takes issue with the Subject Judge's statements that certain motions were denied for the reasons stated at the hearing, submitting that the statements did not "provide justification, only because of prejudice against" Complainant. Complainant asserts that the Subject Judge's order denying various motions "proves due process was denied and that racketeering is being concealed," and he alleges that the Subject Judge is concealing "fraudulent lawsuits." Complainant attached various documents to his first supplement and included a flash drive that he states is a "tape of the July 16, 2015 hearing."

In the second supplemental statement, Complainant argues that _____ Board of Directors is invalid. He complains that the Subject Judge denied the motion to stay implementation of any plan, stating that the Subject Judge "appears to have every intention to protect an invalid board by failing to ensure that a valid board govern[s] the community of _____." Complainant asserts that the Subject Judge's actions are part of a "repeated pattern of protecting a criminal enterprise." He attached various documents to the second supplemental statement.

In the third supplemental statement, Complainant alleges that the Subject Judge covered up racketeering, failed to report and conspired to conceal criminal acts, conspired to prevent certain depositions from being taken, committed a crime by denying a motion for compensation and failing to enter a default judgment, and made a false statement concerning the Board of Directors. Complainant attached various documents to the third 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.

To the extent Complainant's allegations concern the substance of the Subject Judge's official actions, findings, and orders entered in the bankruptcy proceedings, 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, he provides no credible facts or evidence in support of his allegations that the Subject Judge acted to cover up or conceal certain matters, was prejudiced against Complainant, acted to protect a criminal enterprise, 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