

FILED  
U.S. COURT OF APPEALS  
ELEVENTH CIRCUIT  
NOV 13 2015  
Amy C. Nerenberg  
Acting Clerk of Court

**CONFIDENTIAL**

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

**Judicial Complaint No. 11-15-90119**

**IN THE MATTER OF A COMPLAINT FILED BY \_\_\_\_\_**

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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.

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**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 February 2011 a debtor filed a voluntary petition for chapter 13 bankruptcy and listed \_\_\_\_\_ (\_\_\_\_\_) as a creditor with a secured claim in a vehicle in the debtor’s possession. In July 2011 the debtor initiated an adversary proceeding against \_\_\_\_\_ and Complainant, seeking recovery of assets, damages, and sanctions for contempt of court. In the complaint, the debtor alleged that Complainant, acting in the scope of his employment with \_\_\_\_\_, wrongfully repossessed the debtor’s automobile in violation of the automatic bankruptcy stay.

After various proceedings, in September 2012 the defendants’ attorney filed a motion to withdraw from the case. Following a hearing, the Subject Judge granted the motion to withdraw. In February 2013 the Subject Judge entered an order striking \_\_\_\_\_ answer and entering a default judgment as to liability against \_\_\_\_\_ because it was an unrepresented corporate entity. The Subject Judge noted that \_\_\_\_\_ had been given an opportunity to show cause why its answer should not be stricken and default judgment should not be entered against it, but it had failed to show cause. After a trial, the Subject Judge entered a judgment in favor of the debtor and against the defendants, jointly and severally. The defendants appealed, and in March 2014 the district court affirmed the bankruptcy court’s judgment.

## Complaint

In his Complaint of Judicial Misconduct or Disability, Complainant states that the Subject Judge “said one thing and does the opposite.” He states that the Subject Judge told him that \_\_\_\_\_ needed a lawyer, and after Complainant told him that he had spent all he had, the Subject Judge allowed him to proceed pro se at trial. Complainant then appears to complain that he lost the case for the corporation that he did not own and had liens placed on his personal property. He states that he tried to talk to the Subject Judge “several times in person and letters but he cowardly says by sec[r]etary it’s judicial cloth he stands behind.”

## 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.

All of Complainant’s allegations concern the substance of the Subject Judge’s official actions, findings, and orders entered in the case, and therefore, they are directly related to the merits of the Subject Judge’s decisions or procedural rulings.

The allegations of this Complaint are “directly related to the merits of a decision or procedural ruling,” JCDR 11(c)(1)(B). For that reason, pursuant to Chapter 16 of Title 28 U.S.C. § 352(b)(1)(A)(ii) and Rule 11(c)(1)(B) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings of the Judicial Conference of the United States, this Complaint is **DISMISSED**.



Chief Judge