

OCT 14 2016

David J. Smith
Clerk

CONFIDENTIAL

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

Judicial Complaint No. 11-16-90114

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 October 2009 a company filed a voluntary petition for Chapter 11 bankruptcy, and Complainant was listed as the president of the company. In November 2009 a creditor filed an adversary proceeding against Complainant, alleging she had diverted the debtor’s funds to herself in an attempt to defraud the court and creditors. The creditor also filed a motion for preliminary injunction seeking an order preventing Complainant from disposing of funds in a certain account and requiring her to fully account for such funds.

On December 1, 2009, the Subject Judge held a hearing on the motion for preliminary injunction at which Complainant appeared *pro se*. During the hearing, the Subject Judge advised Complainant that under the Fifth Amendment to the United States Constitution, she did not have to answer any questions that could incriminate her, and Complainant then refused to answer various questions by invoking the Fifth Amendment. The Subject Judge ultimately granted the motion for preliminary injunction. An attorney stated that entry of an order directing Complainant to provide an accounting for and return funds that she had converted “is a conclusion that is not merited by the evidence at this point.” The Subject Judge noted that he was drawing a negative inference from Complainant’s refusal to testify, stating, “I think that’s what the rules say with respect to somebody that takes the Fifth, that the Court can draw a negative inference from that. And, plus, I’ve got all of the documentary evidence which is in evidence.” The Subject

Judge also stated he was not making findings of fact and conclusions of law, but was merely granting the motion for preliminary injunction.

The Subject Judge entered an order granting the motion for a preliminary injunction and finding that Complainant had used the creditor's cash collateral in violation of the Bankruptcy Code, had "possibly paid pre-petition employee wages without court authorization," and had "failed to disclose" on the debtor's schedules a certain bank account or certain funds. The Subject Judge restrained Complainant from withdrawing any funds from certain accounts and directed her to, among other things, file a written accounting of certain funds. After that, the creditor filed motions for entry of default and for default judgment, arguing that Complainant had failed to answer or otherwise respond to the complaint and had failed to comply with the order on the preliminary injunction. In March 2011 the Subject Judge entered an order and judgment granting the motions because Complainant had failed to appear or respond to the complaint within the required time, and the adversary proceeding was closed.

The record also shows that in July 2012 a federal grand jury indicted Complainant in the district court on multiple charges stemming from the bankruptcy proceedings. Complainant later pleaded guilty to one count of falsification of records, and she was sentenced to five months of imprisonment.

Complaint

In her Complaint of Judicial Misconduct or Disability, Complainant alleges that the Subject Judge engaged in "willful misconduct," failed to perform his duties, brought the judiciary into disrepute, and committed crimes. Complainant also asserts that the Subject Judge "ignored evidence, twisted rules and procedure, obstructed the record, manufactured facts and ignored other facts, allowed infirm claims and dismissed valid claims, denied admission of evidence prejudicial to [Complainant], denied Constitutional rights, suborned perjury, and misapplied the law."

Complainant takes issue with various aspects of the adversary proceeding, contending that the subpoena for the proceeding was issued in the wrong case and the court's record did not contain the correct information. With respect to the December 2009 hearing, Complainant notes that the Subject Judge stated that "the court can draw conclusions from someone taking the Fifth," while the Subject Judge "is the one who tells [her] to take the Fifth." She states that all questioning should have ceased when she invoked her Sixth Amendment right to counsel. Complainant asserts that the Subject Judge expressed bias and prejudice when he stated that it was to be a "final hearing and final order," until an attorney reminded him that he did not have all of the evidence. Complainant states that evidence from the adversary proceeding was used against her in criminal proceedings, and she argues that criminal charges should never have been

brought against her and that those charges should be vacated due to fraud upon the court by the Subject Judge and an attorney.

Finally, Complainant alleges that the Subject Judge: (1) rejected his oath to uphold the United States Constitution which “evidences either a lack of faithfulness to a principle of law that is beyond dispute or an utter lack of competence”; (2) violated Complainant’s constitutional rights; (3) “should not have engaged in treason to the Constitution”; (4) has “no respect for,” and “did not comply with,” “the law or the Constitution”; (5) “does not maintain professional competence in the law”; (6) “does not install public confidence” in the judiciary; (7) “is dishonest, unfair, incorrect, not honorable, and does not avoid impropriety”; (8) “is not patient or dignified”; (9) allows lawyers in his courtroom to be “rude and ill-mannered”; (10) did not take appropriate disciplinary measures against a lawyer for unprofessional conduct; (11) willfully violated the Code of Conduct for United States Judges; and (12) “should be investigated because of his individual misconduct, conspiracy, obstruction of justice and his violations of [Complainant’s] rights.” She attached various documents to her Complaint.

Discussion

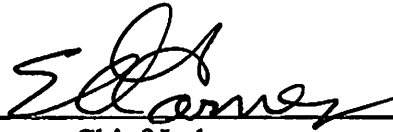
Rule 3(h)(3)(A) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings of the Judicial Conference of the United States provides that cognizable misconduct does not include “an allegation that is directly related to the merits of a decision or procedural ruling.” The Rule provides that “[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 cases, 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, she provides no credible facts or evidence in support of her claims 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