

FILED  
U.S. COURT OF APPEALS  
ELEVENTH CIRCUIT

NOV 01 2017

David J. Smith  
Clerk

**CONFIDENTIAL**

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

**Judicial Complaint No. 11-17-90048**

**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 2002 two individuals filed a voluntary petition for Chapter 7 bankruptcy. In February 2003 an order was entered discharging the debtors, and the case was closed in 2005. In 2013 the debtors filed a motion to reopen the bankruptcy case to add omitted creditors, and the Subject Judge granted the motion.

In April 2013 the debtors filed an adversary action against Complainant and others, noting that Complainant and another defendant were pursuing claims against them in state court and seeking an order confirming the discharge as to any of the defendants’ claims. Following a trial, the Subject Judge entered a final judgment in favor of the plaintiffs and against the defendants. Complainant filed a notice of appeal and moved to proceed in forma pauperis (IFP) on appeal. In late July 2015 Complainant filed a motion for an order authorizing the court reporter to prepare and provide him with transcripts of the trial and other hearings without payment.

The next month, the Subject Judge entered an order granting Complainant’s motion to proceed IFP on appeal and granting in part his motion requesting transcripts. The Subject Judge directed the clerk to arrange with \_\_\_\_\_ (\_\_\_\_\_) for the production and payment of the trial transcript, but denied the motion for transcripts to the extent Complainant sought free transcripts of other hearings. Complainant filed a motion for reconsideration, which the Subject Judge denied.

Complainant then filed a motion for clarification of the record on appeal in which he noted that he had received the trial transcript, but had been advised by the court reporter that additional transcripts had not been prepared. The Subject Judge granted the motion in part, stating that if Complainant had, at his own expense, ordered other transcripts, he may seek leave from the district court to include them in the record on appeal. In February 2016 the district court dismissed Complainant's appeal due to his failure to file a brief. This Court later clerically dismissed Complainant's appeal of that decision for want of prosecution. The adversary proceeding was closed in January 2017.

Meanwhile, the original bankruptcy proceeding was closed in September 2016. The next month, \_\_\_\_\_ filed a motion to reopen the bankruptcy case so \_\_\_\_\_ could remove to the bankruptcy court a lawsuit Complainant had filed against it in state court. In the motion, \_\_\_\_\_ stated that Complainant's lawsuit alleged that \_\_\_\_\_ acted negligently and/or committed fraud by failing to provide him with free hearing transcripts in the adversary proceeding, and it argued that the court had already denied Complainant's request for free transcripts.

After a hearing, in January 2017 the Subject Judge entered an order denying the motion to reopen for lack of jurisdiction. The order stated that Complainant's state court lawsuit alleged that \_\_\_\_\_, "for reasons that seem to defy any logical explanation," promised him free transcripts of multiple hearings, even though court orders and written correspondence from \_\_\_\_\_ stated otherwise. The order also stated that the court was denying the motion to reopen because, "no matter how far-fetched and illogical the claims appear to be," the court lacked subject matter jurisdiction to remove and rule on the state court case. Finally, the order stated, "Presumably, these state law claims can be readily decided by the state court on a motion for summary judgment."

In August 2017 Complainant filed a motion to vacate the Subject Judge's order, alleging it was biased in favor of \_\_\_\_\_, violated the due process clause of the United States Constitution, and lent the prestige of the court to help \_\_\_\_\_ dispose of the state court lawsuit. Complainant attached, among other things, a motion \_\_\_\_\_ had filed in state court seeking to strike the lawsuit as a "sham pleading" and discussing the Subject Judge's January 2017 order denying the motion to reopen. Complainant also attached a state court order granting \_\_\_\_\_ motion, striking Complainant's lawsuit as a sham pleading, and dismissing the lawsuit with prejudice. The order quoted the Subject Judge's January 2017 order and found that the allegations in Complainant's lawsuit contradicted the evidence. The Subject Judge denied Complainant's motion to vacate, finding it was untimely and meritless.

## Complaint

In his Complaint of Judicial Misconduct or Disability, Complainant alleges that the Subject Judge violated Canon 2 of the Code of Conduct for United States Judges “by lending the prestige of his office to advance the private interests of friends in litigation, to wit: the judge’s court reporter, \_\_\_\_\_.” Complainant notes that, following judgment in the bankruptcy case, the Subject Judge granted him leave to receive trial transcripts at government expense but ordered that he would be required to pay for other transcripts. Complainant states that he then submitted transcript information forms to \_\_\_\_\_, “a friend of [the Subject Judge’s] who has been working alongside [him] for years.”

Complainant states that \_\_\_\_\_ “inadvertently misunderstood” the Subject Judge’s order and advised Complainant that he did not have to pay for the requested transcripts. He states that \_\_\_\_\_ later learned that he was required to pay for the non-trial transcripts and sent him an invoice, but his appeal had already been dismissed due to his failure to file a brief, which he “could not properly do without the requested non-trial transcripts.” Complainant notes that he filed a lawsuit against \_\_\_\_\_ in state court alleging she was negligent in misrepresenting that he did not have to pay for any transcripts. He further notes that \_\_\_\_\_ filed a motion to reopen the bankruptcy case, but that he successfully argued that the Subject Judge did not have jurisdiction to reopen the case.

Complainant asserts that the Subject Judge “was not happy about his lack of jurisdiction, and ridiculed me about the merits of the state lawsuit -- something not relevant to the motion to reopen.” He states that the Subject Judge commented that his lawsuit was ““far-fetched”” and ““illogical,”” and that the Subject Judge “assured \_\_\_\_\_ that, even though he was required by law to deny the motion to reopen, he would draft a special order for \_\_\_\_\_ that would persuade the state court judge presiding over the state lawsuit to dispose of the state lawsuit on summary judgment.” Complainant states that \_\_\_\_\_ “relied exclusively” on the Subject Judge’s order in seeking to have the lawsuit stricken as a sham pleading. He states, “As reflected by the state court’s order, adopting the testimony of [the Subject Judge], hook, line and sinker, [the Subject Judge] impermissibly testified on behalf of \_\_\_\_\_ by virtue of his bankruptcy order lending the prestige of [the Subject Judge’s] office to further the private interests of \_\_\_\_\_.” He attached documents to his 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, and orders entered in the bankruptcy case and adversary proceeding, the allegations are directly related to the merits of the Subject Judge's decisions or procedural rulings. Complainant's remaining claims are based on allegations lacking sufficient evidence to raise an inference that the Subject Judge lent the prestige of his office to benefit anyone, violated the Code of Conduct for United States Judges, 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**.



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Chief Judge