

FILED  
U.S. COURT OF APPEALS  
ELEVENTH CIRCUIT

MAR 19 2018

David J. Smith  
Clerk

**CONFIDENTIAL**

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

**Judicial Complaint No. 11-17-90070**

**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 March 2015 Complainant filed a pro se voluntary petition for Chapter 7 bankruptcy. In June 2015 the Subject Judge issued an order granting Complainant a discharge. After that, Complainant filed a motion for an order directing a creditor to cease its efforts to repossess his vehicle, and the Subject Judge denied the motion, finding that Complainant had not properly alleged a violation of the automatic stay. Complainant filed motions alleging that the trustee had conspired with others to “circumvent the process” and had transferred assets without authorization. In March 2017 Complainant filed a motion to dismiss the case and for the court to reject creditors’ untimely filings, which the Subject Judge later denied for lack of prosecution.

In April 2017 the trustee filed a motion to compel Complainant to turn over control of a personal injury claim and to cease and desist from interfering with the trustee’s administration of the personal injury claim. Later that month, the Subject Judge entered an order directing Complainant to appear at a hearing and show cause as to why he should not be sanctioned for interfering with the trustee’s administration of the personal injury claim and the bankruptcy proceeding. Complainant filed a motion asserting that he had not intentionally interfered with the proceedings and alleging that various individuals had engaged in misconduct.

In May 2017 the Subject Judge entered an order granting the trustee's motion to compel Complainant to turn over control of the personal injury claim and to cease and desist from interfering with the trustee's administration of the claim. The order also provided that Complainant, among other things, was prohibited from: (1) "disseminating derogatory, false and scandalous accusations" against the trustee and others; (2) filing papers or pleadings in certain pending cases; (3) filing new actions relating to the personal injury claim; and (4) seeking relief against the trustee or any of his professionals without leave of court.

On the same day, the Subject Judge issued an order sanctioning Complainant for interfering with the trustee's administration of the case, stating that he was to reimburse the trustee for all fees and costs incurred as a result of his interference. Complainant appealed the Subject Judge's orders, and those appeals were later dismissed in the district court for lack of jurisdiction. In July 2017 the Subject Judge entered an order awarding sanctions against Complainant. Complainant appealed that order, and the district court later dismissed that appeal for lack of jurisdiction. Complainant appealed that decision to this Court, and this Court later granted his motion to voluntarily dismiss the appeal.

In the bankruptcy case, the trustee filed a motion seeking to compel Complainant to comply with the court's May 2017 order and to hold him in contempt of court and impose sanctions against him, arguing that he had taken numerous actions in violation of the court's order. Complainant then filed a motion for the court to refer his request for an attorney to the court's "Volunteer Attorney Program," and the Subject Judge denied the motion without prejudice, stating in part the court had no jurisdiction or authority to appoint attorneys to represent debtors. After that, Complainant filed a motion seeking to dismiss the trustee's motion to compel.

In late July 2017, Complainant filed a motion to recuse the Subject Judge, arguing that the Subject Judge: (1) was biased against him; (2) had retaliated against him for filing a lawsuit against the Subject Judge in 2013; and (3) had failed to issue a "proper remand order." The next month, the Subject Judge entered an order denying the motion to recuse, generally finding that Complainant had not established a basis for his recusal. In October 2017 the Subject Judge issued an order granting in part and denying in part the trustee's motion to compel and denying the motion to dismiss as moot.

### Complaint

In his Complaint of Judicial Misconduct or Disability, Complainant states that his Complaint concerns the Subject Judge's "alleged misconduct, mistreatment of the disabled, discrimination and . . . abuse of power." Complainant asserts that the Subject Judge "has an abusive reputation against black pro se litigants in twisting" laws and facts, and that he violated Canons 1, 2, and 3 of the Code of Conduct for United States Judges, violated various rules, and denied Complainant his constitutional rights. Complainant

contends that the Subject Judge engaged in misconduct by refusing to recuse himself from the case when Complainant had filed a lawsuit against him in 2013, and he asserts that the bankruptcy proceedings were tainted by the Subject Judge's anger stemming from that lawsuit.

Complainant takes issue with the Subject Judge's actions and rulings in connection with the personal injury claim, alleging that the Subject Judge refused to consider Complainant's evidence, refused to hold a jury trial, failed to sign a "proper remand order," and was part of a conspiracy to force Complainant to accept an unjust settlement. He states that the Subject Judge knew that he had received a discharge in June 2015, but allowed the trustee to keep the case open for three years despite Complainant's "requesting dismissal or to the trustee corrupt [sic] conduct bordering collusion existing between him and other in attempting to force" Complainant to take an unjust settlement.

He alleges that the Subject Judge was biased against him as a disabled African American pro se litigant, and that the Subject Judge issued orders imposing monetary sanctions on him "because of prejudices and dislikes of African American pro se litigants." Complainant also alleges that the Subject Judge was biased against him given the "numerous denials" of motions he filed, and he complains that the Subject Judge permitted creditors to take inappropriate actions in the case. Complainant asserts that the district court found that he did not violate the Bankruptcy Code.

Complainant alleges that the Subject Judge violated his constitutional rights and/or abused his power by: (1) issuing an order finding that Complainant interfered with the administration of the bankruptcy case and directing him not to contact the parties and to discontinue filings; (2) refusing to grant him access to an attorney; and (3) denying his right to self-representation. Complainant alleges that the Subject Judge: (1) allowed the trustee and others to make misrepresentations and commit criminal acts in the case; (2) covered up criminal acts by allowing contempt charges to be brought against Complainant; (3) failed to address the trustee's violations of the bankruptcy code; and (4) knew of a conspiracy to defraud the bankruptcy estate. Complainant raises additional allegations against individuals other than the Subject Judge. Finally, he seeks to have the proceedings transferred to a different Judicial Council.<sup>1</sup> He attached numerous 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

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<sup>1</sup> Complainant's request that the proceedings be transferred to the judicial council of another circuit is DENIED.

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 case, including his order denying the motion to recuse, 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 was biased against Complainant or disabled African American pro se litigants, abused his power, knew of, participated in, or covered up criminal acts, 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