

FILED  
U.S. COURT OF APPEALS  
ELEVENTH CIRCUIT

MAY 09 2018

David J. Simlin  
Clerk

**CONFIDENTIAL**

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

**Judicial Complaint No. 11-17-90095**

**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 June 2012 Complainant, who was then known as \_\_\_\_\_, filed a voluntary petition for Chapter 7 bankruptcy. After various proceedings, in August 2013 Complainant filed a motion for voluntary dismissal of the case. In November 2013 creditor \_\_\_\_\_ and its subsidiaries and affiliates (\_\_\_\_\_) filed a motion to compel production of documents and for sanctions against Complainant, and the next month \_\_\_\_\_ filed a supplemental motion to compel and for sanctions.

In a December 2013 amended order, the Subject Judge, among other things: (1) granted \_\_\_\_\_ motion to compel and for sanctions; (2) directed Complainant to produce documents to \_\_\_\_\_ counsel, \_\_\_\_\_ and another attorney; and (3) stated that a hearing would be held regarding Complainant's compliance with document requests and the court's order. At a hearing on January 9, 2014, after Complainant testified, the Subject Judge stated that "the absence of documentation is, frankly, shocking" and "it is unbelievable to me that documentation either doesn't exist or wasn't preserved." In late January 2014 \_\_\_\_\_ filed a memorandum of law in support of its earlier motion to compel and motion for sanctions, and a couple of months later, Complainant filed a memorandum in opposition.

In May 2014 the Subject Judge entered an order: (1) granting Complainant's motion to voluntarily dismiss the case; (2) dismissing the case with prejudice for a period

of five years; (3) granting Complainant's stipulation for dismissal with the trustee; and (4) stating that the court retained jurisdiction to impose sanctions or award attorney's fees that the court deemed appropriate or that had already been requested by \_\_\_\_\_. The next month, the trustee, \_\_\_\_\_, filed a motion for authority to pay funds in the estate to the trustee's counsel and to close the case, and the Subject Judge granted the motion.

The case was closed on August 27, 2014. The next day, the trustee filed a Report of No Distribution, certifying that the Chapter 7 estate had been fully administered and requesting that the trustee be discharged from any further duties as trustee. On September 4, 2014, the Subject Judge issued an order discharging the trustee and closing the case. A week later, the trustee filed a Notice to Withdraw Report of No Distribution.

On October 8, 2014, the Subject Judge entered an order reopening the case and granting in part \_\_\_\_\_ motion for sanctions against Complainant. The order described the proceedings and noted that the court held a status conference on \_\_\_\_\_ motions to compel on "January 9, 2013."<sup>1</sup> The Subject Judge concluded that \_\_\_\_\_ had demonstrated that Complainant "violated a Court Order compelling him to produce documents, exhibited bad faith in complying with discovery requests and acted in an evasive manner, all of which required [\_\_\_\_\_] to expend unnecessary resources." In December 2014 the Subject Judge entered a final judgment against the debtor and awarded attorney's fees and expenses to \_\_\_\_\_. Complainant appealed the judgment, and in September 2015 the district court affirmed the judgment in its entirety. There have been additional proceedings in the bankruptcy court.

### Complaint

In his Complaint of Judicial Misconduct or Disability, Complainant states that from September 4 to 10, 2017, "upon information and belief, and facts gleaned from the records maintained by the Clerk of Court . . . and comments made by Attorney \_\_\_\_\_, Attorney for \_\_\_\_\_ . . . , [the Subject Judge], Trustee \_\_\_\_\_ and \_\_\_\_\_ engaged inappropriate [sic] ex-parte communications." Complainant asserts that the "inappropriate ex-parte communications resulted in an agreement between the 3 that on 9/11/2014, Trustee \_\_\_\_\_ would withdraw his Chapter 7 Trustee's Report of No Distribution; [the Subject Judge] would then *sua sponte* re-open the Chapter 7 Case and Grant \_\_\_\_\_ sanctions." Complainant continues that once the Subject Judge entered the order, "Trustee \_\_\_\_\_ would then re-file his Chapter 7 Trustee's Report of No Distribution."

Complainant states that the Subject Judge's order reopening the case and granting \_\_\_\_\_ sanctions "opined that a hearing held on January 9, 2013 supported his actions," and Complainant states that the hearing was held 22 months before the order

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<sup>1</sup> This appears to be a typographical error, as the hearing took place on January 9, 2014.

was issued. He contends that the events “clearly show that no interceding events occurred that would cause [the Subject Judge] to *sua sponte* re-open a Closed Chapter 7 Case, other than the improper discussions [the Subject Judge] had with Trustee \_\_\_\_\_ and \_\_\_\_\_.” In conclusion, Complainant states that his Complaint does not challenge the merits of the Subject Judge’s actions, “but identifies that the communications of [the Subject Judge], Trustee \_\_\_\_\_ and \_\_\_\_\_, to wit designing a scheme to re-open a closed Chapter 7 Case, following the scheme, and actually re-opening the Chapter 7 Case, is misconduct.” He attached documents to his Complaint.

### Discussion

Complainant’s claims are based on allegations lacking sufficient evidence to raise an inference that the Subject Judge engaged in improper ex parte communications or participated in a scheme to award sanctions to a creditor.

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 that reason, pursuant to Chapter 16 of Title 28 U.S.C. § 352(b)(1)(A)(iii) and Rule 11(c)(1)(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