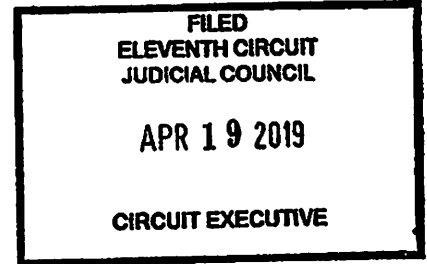


**FOR THE JUDICIAL COUNCIL
OF THE ELEVENTH CIRCUIT**

11-18-90103



**IN RE: COMPLAINT OF JUDICIAL
MISCONDUCT OR DISABILITY**

ON PETITION FOR REVIEW*

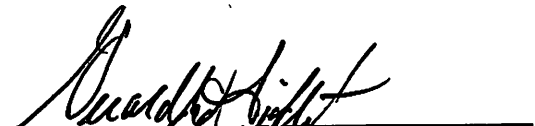
Before: TJOFLAT, MARCUS, WILSON, WILLIAM PRYOR, MARTIN, JORDÁN, ROSENBAUM, JILL PRYOR, and NEWSOM, Circuit Judges; MOORE, MERRYDAY, THRASH, BOWDRE, LAND, DuBOSE, HALL, WALKER, and MARKS,** Chief District Judges.

Upon consideration of the petitioner's complaint by a review panel consisting of Judges Tjoflat, Wilson, William Pryor, Land, and Walker, the order of Chief Judge Ed Carnes, filed on 4 February 2019, and of the petition for review filed by the complainant on 4 March 2019, with no non-disqualified judge on the Judicial Council Review Panel having requested that this matter be placed on the agenda of a meeting of the Judicial Council,

The Judicial Council Review Panel hereby determines that the disposition of this matter was proper and said disposition is hereby **AFFIRMED**.

The foregoing actions are **APPROVED**.

FOR THE JUDICIAL COUNCIL:


United States Circuit Judge

- * Chief Circuit Judge Ed Carnes did not take part in the review of this petition.
- ** Judge Emily Marks is Acting Chief Judge.

FILED
U.S. COURT OF APPEALS
ELEVENTH CIRCUIT

FEB 04 2019

David J. Smith
Clerk

CONFIDENTIAL

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

Judicial Complaint No. 11-18-90103

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”).

As an initial matter, after Complainant filed his Complaint, he filed two supplemental statements. The filing of those supplemental statements is permitted. See 11th Cir. JCDR 6.7.

Background

The record shows that in June 2013 _____ (the Debtor), which owned _____, filed a voluntary petition for chapter 11 bankruptcy. The Debtor later filed schedules showing that _____ was a creditor holding a secured claim. The schedules also showed that Complainant and _____ were unsecured creditors, and _____ held a five-year lease for _____ located at the hotel. Other documents indicate that Complainant was the president of _____ and the director of _____.

In July 2013 _____ and the United States Trustee filed motions seeking the appointment of a chapter 11 trustee. The Subject Judge granted the motions, and _____ was appointed as Chapter 11 Trustee. Trustee _____ filed an ex parte application under 11 U.S.C. § 327(a) to employ _____ of the law firm _____, as well as the law firm itself, as the Trustee’s counsel in the case, and the Subject Judge granted it.¹ Trustee _____ also filed an application to employ the consulting firm of _____.

¹ “[T]he trustee, with the court’s approval, may employ one or more attorneys, accountants, appraisers, auctioneers, or other professional persons, that do not hold or represent an interest.

_____ and an individual as financial advisor and forensic accountant, noting that the Trustee was a shareholder in _____, and the Subject Judge granted the application. Trustee _____ later filed an application to employ a real estate broker called _____, attaching an affidavit from _____ on behalf of the broker, and the Subject Judge granted the motion.

In August 2013 the Trustee filed a Motion to Reject Lease seeking to reject the purported lease between the Debtor and _____. The next month, the Trustee initiated an adversary proceeding against _____ and Complainant, seeking a declaration that the purported lease between the Debtor and _____ was null and void. The Trustee also filed an emergency motion for a temporary restraining order (TRO) and preliminary injunction, seeking to enjoin Complainant and _____ from interfering with or accessing the property. Complainant and _____ were represented by _____ in the adversary proceeding. The Subject Judge granted the TRO and later entered a preliminary injunction enjoining Complainant and _____ from interfering with the property.

After various proceedings, in November 2013 Complainant and _____ filed an amended witness list and a trial memorandum, and Trustee _____ filed motions to strike those documents as untimely filed. The Subject Judge granted the motions to strike. Following a trial, the Subject Judge entered an order determining that _____ purported lease was invalid and unenforceable because the signatures had not been witnessed, and the defense of equitable estoppel was barred. Complainant filed a pro se notice of appeal and motion to stay pending appeal, but later, through counsel, he withdrew those filings. The adversary proceeding was closed in April 2014.

Meanwhile, in October 2013, in the main bankruptcy case Trustee _____ filed a motion seeking, among other things, an order permitting the sale of the hotel free and clear of all encumbrances, and the Subject Judge entered an order authorizing the sale. The Subject Judge also entered an order granting the Trustee's motion to reject _____ purported lease in light of the outcome of the adversary proceeding.

In December 2013 Trustee _____ filed a bidding summary showing that a certain company bid _____ to purchase the hotel. The Subject Judge entered an order generally approving the sale and directing the payment of, among other things, nearly _____ to _____ and _____ to _____ for its real estate commission. The order found that the purchase agreement was negotiated, proposed, and entered into by Trustee _____ and the purchaser "without collusion, in good faith, and from arms'-length bargaining positions." A couple of months later, the Trustee filed a Chapter 11 Plan. After that, _____ filed an application for interim compensation

_____ adverse to the estate, and that are disinterested persons, to represent or assist the trustee in carrying out the trustee's duties under this title." 11 U.S.C. § 327(a).

seeking approximately _____ in fees and expenses, which the Subject Judge later granted.

In February 2014 _____ filed a motion to determine the amount of its remaining secured claim. Complainant and _____, through _____, filed a cross-motion to determine the amount of _____ claim in which they stated that, upon information and belief, _____ had received payments under a “swap agreement” with the Debtor and once held cross-collateralization on certain property owned by an entity called _____. The motion stated that it was unclear whether _____ had applied payments received under the swap agreement to the Debtor’s account or credited profits from the relinquishment of cross-collateralized property to the Debtor. At a hearing in April 2014, the Subject Judge asked whether there was other collateral, and counsel for _____ responded that there was no other collateral.

Following a mediation conference, Trustee _____ and _____ reached a settlement agreement, while _____ and Complainant, _____, and _____ reached an impasse. The Trustee filed a Motion to Compromise Controversy with _____. The Trustee also filed an interim fee application seeking approximately _____, which the Subject Judge later granted. Following a hearing, in June 2014 the Subject Judge entered an order granting the Motion to Compromise Controversy and authorizing Trustee _____ to pay _____ in satisfaction of its secured claim.

The next month, Complainant filed a pro se notice of appeal and motion to extend the time to appeal in which he stated that his appeal was untimely due to a failure on the part of his attorney _____. Trustee _____ objected to the motion to extend time to appeal. Complainant filed a response in which he stated that _____ possibly had committed fraud and failed to credit the account of the Debtor with: (1) a _____ certificate of deposit posted by the Debtor; (2) approximately _____ it received under a “swap agreement”; and (3) the sale of other cross-collateralized property. After a hearing, the Subject Judge denied the motion to extend the time to appeal and struck Complainant’s notice of appeal as untimely. Complainant appealed, and the district court later denied his notice of appeal, finding the Subject Judge had not abused his discretion in determining that Complainant had failed to show excusable neglect in filing the untimely notice of appeal.

In September 2014 Trustee _____ filed a motion to convert the case to a chapter 7 case, which the Subject Judge granted the next month. _____ was appointed as interim Chapter 7 Trustee.² In November 2014 Trustee _____, through

² “Promptly after the order for relief under this chapter, the United States trustee shall appoint one disinterested person that is a member of the panel of private trustees established under

_____, filed objections to the claims of Complainant, _____, and _____, contending the claims should be stricken. On the same day, the Trustee filed an ex parte application to continue _____ employment as counsel, which the Subject Judge granted about a week later. In December 2014 _____ and _____ filed a Motion for Resolution of Disputed Trustee Election, nominating another individual to serve as trustee. Complainant filed a pro se response in opposition to the Trustee's objections in which he generally alleged that Trustee _____ had breached her fiduciary duties. He also filed motion seeking, among other things, to deny the Trustee's objections to the claims.

After that, Trustee _____ filed a fee application for more than _____ and _____ filed a fee application for approximately _____, which included money previously withheld. Complainant filed objections to the fee applications, and the Subject Judge overruled the objections and granted the applications. The Subject Judge also entered an order finding that neither _____ nor _____ was eligible to request an election of a trustee and determining that _____ would continue to serve as Trustee. Complainant, _____, and _____ appealed that order. In March 2016 the district court affirmed the Subject Judge's order on the disputed trustee election. The court stated that the real essence of the appellants' position was that Trustee _____ objections to their claims were made for a "nefarious purpose," but that a review of the record refuted any such contention. In December 2016 this Court affirmed the district court's judgment "based on its well-reasoned order."

In March 2015 in the main bankruptcy case, Complainant filed a motion to disqualify the Subject Judge in which he argued that: (1) the Subject Judge had a personal bias and prejudice against Complainant and his attorney _____, due to disputes the Subject Judge and _____ had in the past³; (2) the Subject Judge had a "substantial association" with _____, where he previously worked; (3) his actions displayed a deep-seated favoritism toward _____ and _____; (4) he ignored a fraud being committed by _____; and (5) he engaged in ex parte contacts with _____ in the case. In June 2015 _____ filed a motion to be relieved as counsel for Complainant, _____, and _____, which the Subject Judge granted.

In July 2015 the Subject Judge entered an order denying the motion to disqualify, generally finding that Complainant had not established a basis for his disqualification. Complainant filed a motion for reconsideration, which the Subject Judge denied. Complainant appealed, and the district court later affirmed the denial of the motion to

section 586(a)(1) of title 28 or that is serving as trustee in the case immediately before the order for relief under this chapter to serve as interim trustee in the case." 11 U.S.C. § 701(a)(1).

³ The record shows that in September 2011 the bankruptcy court sanctioned _____ based on the tone of his filings and his actions in connection with a case before the Subject Judge. The sanctions order was upheld in appeals to the district court and this Court.

disqualify and motion for reconsideration, generally finding that the Subject Judge had not abused his discretion in deciding not to recuse himself from the case. The district court determined that: (1) Complainant's complaints about the Subject Judge's decisions not to recuse fell into the category of "unsupported, irrational, or highly tenuous speculation"; (2) the Subject Judge's impartiality could not be reasonably questioned on the basis of his prior employment with _____; and (3) Complainant presented no evidence that the Subject Judge was influenced by personal or extrajudicial bias.

In March 2016 in the main bankruptcy case, Complainant filed a Notice of Similar or Related Actions in which he notified the court that he had filed with the United States Trustee's Office a complaint and request for legal action against Trustee _____, and the Subject Judge later struck the document as insufficient. In May 2016 the Subject Judge issued an order directing Complainant to show cause why he should not be sanctioned under 28 U.S.C. § 1927 for unreasonably and vexatiously multiplying the proceedings in the case.⁴

The next month, Complainant filed a pro se adversary proceeding against Trustee _____, raising various allegations of misconduct. He attached at Exhibit D a 2011 "Spreader Agreement, Cross-Default and Cross-Collateralization Agreement" between _____, the Debtor, _____, and others. The Subject Judge dismissed the adversary proceeding in November 2016 because of Complainant's failure to comply with a pretrial order and because the complaint was frivolous. Complainant filed a motion to reconsider, which the Subject Judge denied. Complainant appealed, and the district court later dismissed the appeal after Complainant failed to respond to certain filings. The adversary proceeding was closed in April 2017.

Meanwhile, in June 2016, in the main bankruptcy case a hearing was held on the show cause order. Complainant generally argued that he had not acted in bad faith and took issue with Trustee _____ actions in the case. At the hearing, _____: (1) noted that an objection had been raised to the settlement with _____ that "there was other collateral, or that _____ failed to give a credit"; (2) contended that no evidence had been presented in support of such claims; and (3) stated, "your Honor may recall the bank officer standing before the Court telling your Honor that there was no other collateral supporting the debt here, and that the assets, that the sale proceeds was the last remaining bucket of collateral _____ had to satisfy its claim." The Subject Judge asked Complainant to identify where he could find evidence in support of his allegations, and Complainant stated that the evidence was in Exhibit D to his complaint in the

⁴ Section 1927 states, "Any attorney or other person admitted to conduct cases in any court of the United States or any Territory thereof who so multiplies the proceedings in any case unreasonably and vexatiously may be required by the court to satisfy personally the excess costs, expenses, and attorneys' fees reasonably incurred because of such conduct."

adversary proceeding. The Subject Judge stated that if there was fraud, he would “do something about it,” but Complainant could not make those allegations without proof.

In August 2016 Complainant filed a Fed. R. Civ. P. 60(d)(3) Motion for Relief from Orders for Fraud on the Court in which he alleged that Trustee _____, _____, _____, and _____ attorney intentionally deceived the court and that additional collateral had been concealed. In December 2016 the Subject Judge issued orders granting the Trustee’s objections to the claims of Complainant, _____, and _____, and striking those claims with prejudice. Following an evidentiary hearing at which Complainant did not appear, the Subject Judge entered an order denying Complainant’s Rule 60 motion, finding that Trustee _____ and _____ had presented evidence at the hearing conclusively establishing that Complainant’s allegations of fraud and misrepresentation lacked merit. Complainant filed a motion for reconsideration of various orders, which the Subject Judge denied, and he filed notices of appeal, which the Subject Judge later dismissed for failure to timely file documents or pay the filing fee.

After additional proceedings, on August 1, 2017, the Subject Judge entered an order sanctioning Complainant under 28 U.S.C. § 1927 for unreasonably and vexatiously multiplying the proceedings. The Subject Judge initially rejected Complainant’s contention that he had been prohibited from conducting discovery on _____ settlement motion, and he found that Complainant had provided “no evidence whatsoever to support any of” his allegations in the case. In describing Complainant’s challenge to the order appointing the Chapter 7 Trustee, the Subject Judge stated that the challenge was frivolous and “depleted the estate’s assets by forcing Trustee _____ to incur unnecessary litigation expenses, and three levels of the federal judiciary were forced to address idiotic claims.”

In the sanctions order, the Subject Judge then analyzed whether § 1927 could be applied to Complainant, first determining that this Court had “left the door open” for § 1927 sanctions to be applied to pro se litigants.” The Subject Judge also recognized that cases from other circuits had held that bankruptcy courts were not “courts of the United States” within the meaning of 28 U.S.C. § 451, and that this Court had held they were not “courts of the United States” in other contexts. However, after discussing various cases, the Subject Judge concluded that bankruptcy courts, operating as units or divisions of district courts, may impose sanctions under § 1927.

The Subject Judge went on to find that Complainant violated § 1927 because he had “inexorably multiplied these proceedings, dragging them on for years more than they should have taken, in a completely unreasonable, vexatious, and nonsensical manner.” Among other things, the Subject Judge stated that Complainant had “[r]epeatedly filed documents so voluminous, winding, and fantastical that reviewing each one was an adventure of Baumian proportions.” In a footnote, the Subject Judge described the plot

L. Frank Baum's classic children's book The Wonderful Wizard of Oz, explaining that the protagonist in the story is "joined by a tin man who is in search of a heart, a cowardly lion who seeks courage, and a scarecrow who lacks a brain." He noted that the heroine's experiences in the book turned out to be a dream, and stated, "If only the same could be said about each and every frivolous filing from [Complainant]." In another footnote, the Subject Judge described the plot of Lewis Carroll's Alice's Adventures in Wonderland, noting that the events in the book turned out to be a dream, and stating, "Unfortunately, there is no 'waking up' from the nightmare that [Complainant] has caused this Court, the Trustee, and the estate."

The Subject Judge determined that Complainant had acted in bad faith and directed that he would be personally liable for the excess costs, expenses, and attorney's fees as a result of his actions. The order also prohibited Complainant from filing any pleading or other paper related to the bankruptcy case without prior written permission. In a footnote, the Subject Judge stated it had "come to the Court's attention" that Complainant had been arrested in March 2017 for, among other things, fraud and misrepresenting himself as qualified to practice law, and that he was presently incarcerated.

After that, Trustee _____ provided an accounting, and the Subject Judge entered an order directing Complainant to pay sanctions in the amount of _____ to the Trustee. Complainant appealed, and the Subject Judge later entered an order finding that he was not entitled to proceed in forma pauperis (IFP) and dismissing the appeal for failure to pay the filing fee. Complainant filed a motion for reconsideration, which the Subject Judge denied. Complainant filed another notice of appeal and motion to proceed IFP, and the Subject Judge later denied the IFP motion and dismissed the appeal for failure to file certain documents and failure to pay the filing fee.

Complaint

In his Complaint of Judicial Misconduct or Disability and attachments to his Complaint, Complainant raises various allegations against the Subject Judge pertaining to the above-described bankruptcy cases and other matters.

1. General Allegations against the Subject Judge

Complainant generally alleges that the Subject Judge misused and abused the power of the Federal Judiciary, committed bankruptcy fraud, participated in a money laundering scheme, obstructed justice, and engaged in other criminal and racketeering activity. He asserts that the Subject Judge has "a long history of misconduct, unlawfulness, abuse of the power of the Judiciary, vendetta[]s and vengeance and other improprieties harmful to the integrity of the judicial system." He refers to the Subject

Judge as a “bully” and a “common street thug” and alleges that the Subject Judge has acted for his and his spouse’s personal gain.

Complainant alleges that the Subject Judge: (1) violated the Code of Conduct for United States Judges in various respects; (2) allowed relationships to influence his judicial conduct and judgment; (3) lent the prestige of his office to advance his private interests and the interests of others; and (4) failed to be respectful and courteous. Complainant also asserts that the Subject Judge “does not enjoy an honorable reputation in the media,” stating that there have been “countless criticisms” of him by attorneys in the media, which were made anonymously due to fear of reprisal.

2. Allegations Pertaining to Complainant’s Bankruptcy Cases

Complainant states that his bankruptcy litigation before the Subject Judge “can only be described as a five (5) year massive bankruptcy fraud” in which the Subject Judge conspired with Trustee _____, _____, _____, _____, and others to defraud the estate of the Debtor and the unsecured creditors of millions of dollars through a “campaign of fraud, conspiracy, harassment, criminality and psychological torture of” Complainant. He asserts that he provided evidence of the bankruptcy fraud, consisting of a cross-collateralization agreement and a commitment letter, but the Subject Judge repeatedly falsely claimed that he had presented no evidence and admitted that he never considered the fraud allegations. Complainant also asserts that the sale of _____, as well as other hotels, to the same buyer has the “hallmarks of money laundering,” and he claims that the Subject Judge and others are involved in a money laundering enterprise.

Complainant notes that, before becoming a bankruptcy judge, the Subject Judge was a partner at _____, and he alleges that the fact that _____ represented Trustee _____ was “collusive.” Complainant also states that, upon his information and belief, _____ with the real estate broker was related to an attorney with the same name from _____, and that the Subject Judge failed to disclose the “collusive” relationship to the unsecured creditors.

Complainant alleges that the Subject Judge sought “vengeance” in the case because of Complainant had hired _____, whom he asserts the Subject Judge disliked. He complains that, from the very beginning, the Subject Judge belittled _____, made improper comments, and issued “outrageous rulings.”

Complainant contends that the Subject Judge and Trustee _____ violated their duty to investigate the legitimacy of the sale of the Debtor’s asset. He contends that a review of the Trustee’s fee applications reveal that she never examined _____ claim against the estate, and the Subject Judge’s “willingness to ignore” this showed that he was involved in the scheme to defraud. Complainant asserts that the

Subject Judge granted “extravagant” fees to Trustee _____, _____, and others without questioning or examining the claimed fees, which Complainant characterizes as an embezzlement from the bankruptcy estate. He complains that the Subject Judge never required _____, Trustee _____, and others to account for the money paid to them. He also alleges that the Subject Judge knew that the Trustee had illegally hired an attorney to unlawfully object to unsecured creditors’ claims and unlawfully back-dated an order approving the attorney’s hiring to further the scheme to defraud.

Complainant then generally takes issue with the Subject Judge’s orders and rulings in the case, alleging that: (1) certain rulings prevented Complainant from defending his property rights; (2) the Subject Judge entered orders that had the effect of denying the unsecured creditors the opportunity for discovery on the Trustee’s Motion to Compromise Controversy with _____, and later sought to cover up his actions by claiming his orders only stayed discovery related to a certain motion; and (3) the Subject Judge denied all of Complainant’s motions “without consideration or hesitation,” while granting every motion filed by Trustee _____ or _____ without hesitation. He asserts that the Subject Judge initiated and permitted ex parte communications in the case.

Complainant alleges that the Subject Judge imposed § 1927 sanctions on him without lawful authority and with “criminal intent.” Complainant asserts that his March 2016 Notice of Similar or Related Actions, in which he notified the court that he had filed an action against Trustee _____, “enraged” the Subject Judge because he feared it would expose the bankruptcy fraud. He contends the Subject Judge knew that he did not have authority to impose sanctions under § 1927 because the statute does not apply to pro se litigants and bankruptcy courts are not “courts of the United States” as used in 28 U.S.C. § 451. Complainant alleges that the sanctions order was issued with the intent to further and conceal the scheme to defraud him and to deter him from exposing the fraud. He also asserts that the Subject Judge caused the sanctions order to be published in order to “harass” him. Complainant takes issue with various statements in the sanctions order, contending the order falsely portrayed him as an “unrelenting pro se creditor” who presented no evidence of his allegations. He complains that the order accused him of misconduct and referred to him as a “nightmare” and a “scarecrow who lacks a brain.”

3. Allegations Pertaining to Other Bankruptcy Cases

Complainant alleges that the Subject Judge has a “highly questionable pattern” of failing to recuse himself in cases where he should be recused. Complainant describes the case of _____, stating that, “[u]pon information and belief,” the Subject Judge’s impartiality was tainted by his future spouse’s participation in that case. Complainant asserts that the Subject Judge failed to recuse in that case and other cases where his spouse appeared and that he awarded his spouse excessive legal fees.

Complainant contends that an article about the Subject Judge shows that he directed that an attorney, _____, be arrested despite knowing that a district judge's order precluded her arrest. Complainant asserts that the Subject Judge ignored the district judge's order because he believes he is "above the law." Complainant also asserts that the Subject Judge initiated a bogus contempt proceeding against the attorney because of her acrimonious relationship with the Subject Judge's spouse.

4. Other Allegations

Complainant alleges that the Subject Judge's marriage violated federal law and demeaned the Federal Judiciary, and that he allowed his marriage to influence his actions. Complainant asserts that the Subject Judge conveyed and permitted others to convey that certain attorneys are in a special position to influence him.

Complainant alleges that, beginning in May 2016, the Subject Judge conspired with a "corrupt" state attorney, _____, to commit criminal and racketeering activity, including Complainant's kidnapping, robbery, and obstruction of justice. He asserts that the Subject Judge and _____ orchestrated Complainant's prosecution on baseless charges at the Subject Judge's request in order to prevent Complainant from exposing the bankruptcy fraud. He alleges that the Subject Judge has been actively working with _____ in the criminal prosecution and imposed sanctions on Complainant in order to assist _____ in the criminal case.

Complainant alleges that there are a series of emails between _____ and "his accomplices," including the Subject Judge, as well as "a compilation of other evidence" that link the Subject Judge and _____ together in the conspiracy. He states that the Subject Judge, in the sanctions order, indirectly admitted his participation in the RICO enterprise by revealing that he knew of Complainant's arrest, and that emails between _____ and the Subject Judge's law clerk, _____, show that the court did not fortuitously learn of the arrest, as the Subject Judge's statement implied. Complainant purports to include the contents of an August 17, 2017 email from _____ to _____ in which _____ allegedly wrote, "_____, As discussed on the phone, please find attached the following order which sanctions _____ pursuant to 28 U.S.C. section 1927. If you have any questions, please don't hesitate to ask." Complainant states that _____ emailed Complainant's public defender with a copy of the order, which he asserts shows _____ intent to use the order against him in the criminal prosecution.

Complainant also alleges that _____ was present at a March 2017 status hearing in Complainant's criminal case, and he contends there was no legitimate reason for _____ to attend the hearing. Complainant states that his attorney asked _____ and _____ why _____ was there, and they responded, "'Judge _____ wanted me (_____ - _____ law clerk) to come and lay eye balls on

_____.” Complainant contends that _____ appearance constituted intimidation and a threat by the Subject Judge. Finally, Complainant asserts that the Subject Judge made inappropriate public comments during the bankruptcy proceedings that might affect the outcome of Complainant’s criminal proceedings.

Supplements

In his first supplemental statement, Complainant generally reiterates certain allegations, including that the Subject Judge conspired with _____ in connection with Complainant’s state court criminal proceedings, and he states that _____ used the Subject Judge’s “illegal” sanctions order against him in those proceedings. Complainant also contends that the Subject Judge does not have immunity in connection with the “unlawful” sanctions order and that he is guilty of the crime of “official misconduct.” Finally, Complainant requests certain relief under the Crime Victims’ Rights Act.

In his second supplemental statement, Complainant asserts that the Subject Judge is a member of a lawyer’s association that is “a radical extremist group,” and he alleges that the Subject Judge has improperly advanced the private interests of his spouse and other members of that group. Complainant also refers to a lawsuit he has filed in the _____ District of _____, and he incorporates by reference his complaint in that lawsuit.

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 Complainant’s and other bankruptcy cases, including his order sanctioning Complainant and his decisions not to

recuse, 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: (1) committed or covered up crimes; (2) acted with an illicit or improper motive; (3) was biased against Complainant or his attorney; (4) treated Complainant or his attorney in a demonstrably egregious and hostile manner; (5) violated the Code of Conduct for United States Judges; (6) lent the prestige of his office to advance his interest or the interests of others; (7) engaged in improper ex parte communications; (8) demeaned the Federal Judiciary; (9) conveyed and permitted others to convey that certain individuals were in a special position to influence him; (10) conspired with a state attorney in connection with Complainant's criminal prosecution; or (11) 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**.



Chief Judge