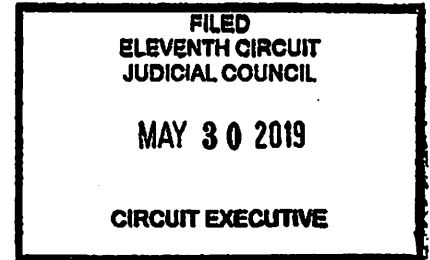


**FOR THE JUDICIAL COUNCIL
OF THE ELEVENTH CIRCUIT**

11-18-90108



**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 20 February 2019, and of the petition for review filed by the complainant on 25 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 20 2019

David J. Smith
Clerk

CONFIDENTIAL

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

Judicial Complaint No. 11-18-90108

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 eight supplemental statements. The filing of the supplemental statements is permitted. See 11th Cir. JCDR 6.7.

Background

The record shows that in May 2014 Complainant filed a voluntary petition for chapter 13 bankruptcy. The same month, he initiated an adversary proceeding against a bank and another company, arguing that the defendants did not have a valid claim or interest in his homestead property. The adversary proceeding initially was assigned to a United States bankruptcy judge who is not the Subject Judge. In July 2014 Complainant filed an amended complaint against the defendants seeking a declaration that they had no claim on his property.

Following a hearing, in September 2014 the bankruptcy court issued an order dismissing the adversary proceeding, finding that the amended complaint failed to state a claim on which relief could be granted. Complainant filed a motion for reconsideration, which the court denied. Complainant appealed, and the district court later affirmed the order denying Complainant’s motion for reconsideration. This Court dismissed Complainant’s appeal of that decision for lack of jurisdiction. The adversary proceeding was closed in April 2016. In July 2017 Complainant was granted a discharge in the main bankruptcy case, and that case was closed in September 2017.

After Complainant filed additional documents in the closed adversary proceeding, the case was reassigned to the Subject Judge in January 2018. Complainant filed a motion to remand to the state court, alleging that fraud had been committed, and the Subject Judge denied the motion for lack of jurisdiction because the case was closed. Complainant filed a motion for clarification, which the Subject Judge denied as moot. In February 2018 he filed a "Motion to Reconstruct / Adjudicate a Fractured Case," alleging that a defendant's proof of claim filed in the main bankruptcy case included a fraudulent mortgage and note. The motion was treated as a motion to reopen the adversary proceeding.

At a hearing on the motion, Complainant argued that a fraud had been committed in connection with a proof of claim that had been filed and withdrawn. Opposing counsel stated that Complainant had initiated other litigation raising the same issues that were being raised in connection with the motion to reopen. Counsel explained that in that other litigation, the district court had dismissed the complaint with prejudice and the dismissal was affirmed on appeal. After hearing Complainant's response, the Subject Judge stated:

And I think the issue really before me is that it's too late for me to do anything. My bosses have essentially decided this already. My bosses are the District Court and the _____ Circuit. They're the ones, really, who have made the decisions that I think that you disagree with, and I can't make any ruling that would countermand anything that they have decided.

After that, the Subject Judge entered an order denying the motion to reopen the adversary proceeding, noting that Complainant had raised the same claims that he had already unsuccessfully raised with the bankruptcy, district, and circuit courts. The Subject Judge also denied Complainant's motion for reconsideration of the oral ruling on the motion to reopen.

Complainant then filed multiple motions seeking various types of relief, which the Subject Judge denied. In June 2018 the Subject Judge entered an order barring Complainant from submitting any more filings in the matter, finding that his "repeated filing of meritless papers in this closed adversary proceeding were undertaken to harass [a defendant] and thus constitutes bad faith." Complainant then filed, among other things, a motion to recuse the Subject Judge. In July 2018 the Subject Judge denied the motion to recuse, generally finding that Complainant had not established a basis for her recusal. Complainant filed a motion for reconsideration, which the Subject Judge denied. In November 2018 he filed a motion to reopen the adversary proceeding.

Complaint

In his Complaint of Judicial Misconduct or Disability, Complainant takes issue with a proof of claim filed in his bankruptcy case and with the Subject Judge's order denying his motion to reopen the adversary proceeding, suggesting the Subject Judge allowed a criminal act to take place. He asserts that the Subject Judge stated in open court that she "cannot give you an independent decision because my hands are tied and receiving [sic] pressure from my bosses." Complainant states that he seeks, among other things, the Subject Judge's recusal, the voiding of her orders, and the reopening of his case. He attached various documents to his Complaint.

Supplements

Complainant attached various documents to his eight supplemental statements and: (1) in the first supplement, he states that courts have ignored the filing of a fraudulent mortgage and a void promissory note and that the Subject Judge "admittedly 'succumbed' to 'pressure from her bosses' 'who tied her hands'"; (2) in the third supplement, he states that the Subject Judge "and her 'protagonists' have suborned [his] constitutional entitlements" and that the Subject Judge ignored a proof of claim; and (3) in the fifth supplement, he asserts that his due process rights have been suspended and ignored, and he contends that the Subject Judge must recuse from his case.

Discussion

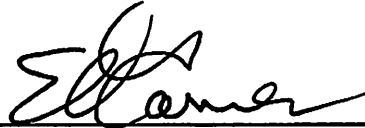
Rule 3(h)(3)(A) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings of the Judicial Conference of the United States provides that cognizable misconduct does not include "an allegation that is directly related to the merits of a decision or procedural ruling." The Rule provides that "[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 adversary proceeding, 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 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