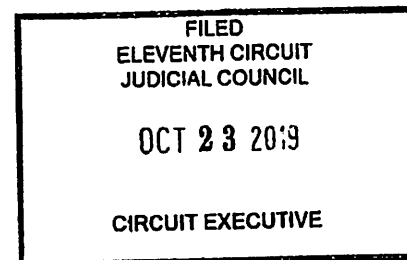


**FOR THE JUDICIAL COUNCIL
OF THE ELEVENTH CIRCUIT**

11-18-90139



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

ON PETITION FOR REVIEW*

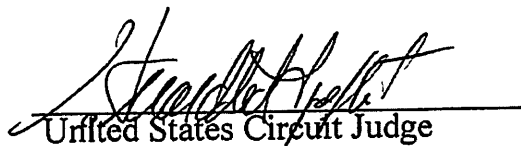
Before: TJOFLAT, MARCUS, WILSON, WILLIAM PRYOR, MARTIN, JORDÁN, ROSENBAUM, JILL PRYOR, and NEWSOM, Circuit Judges; MOORE, MERRYDAY, THRASH, BOWDRE, LAND, DuBOSE, HALL, WALKER, and MARKS, Chief District Judges.

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 24 July 2019, and of the petition for review filed by the complainant on 27 August 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**.

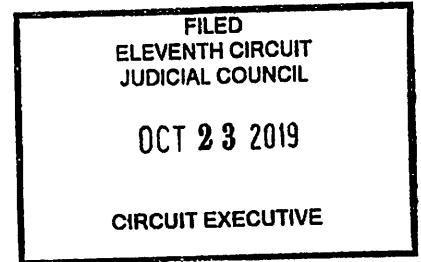
FOR THE JUDICIAL COUNCIL:


United States Circuit Judge

* Chief Circuit Judge Ed Carnes did not take part in the review of this petition.

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

11-18-90140



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

ON PETITION FOR REVIEW*

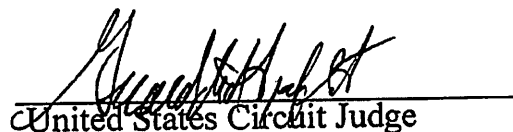
Before: TJOFLAT, MARCUS, WILSON, WILLIAM PRYOR, MARTIN, JORDÁN, ROSENBAUM, JILL PRYOR, and NEWSOM, Circuit Judges; MOORE, MERRYDAY, THRASH, BOWDRE, LAND, DuBOSE, HALL, WALKER, and MARKS, Chief District Judges.

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 24 July 2019, and of the petition for review filed by the complainant on 27 August 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.

CONFIDENTIAL

FILED
U.S. COURT OF APPEALS
ELEVENTH CIRCUIT

JUL 24 2019

David J. Smith
Clerk

BEFORE THE CHIEF JUDGE
OF THE ELEVENTH JUDICIAL CIRCUIT

Judicial Complaint Nos. 11-18-90139 and 11-18-90140

IN THE MATTER OF A COMPLAINT FILED BY _____

IN RE: The Complaint of _____ against U.S. Bankruptcy Judges _____
and _____ of 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 Judges _____ and _____ (collectively, “the Subject Judges”),
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”).¹

Background

The record shows that in June 2015 Complainant filed a petition for Chapter 11
bankruptcy. The case initially was assigned to Judge _____ and was reassigned to
Judge _____ in July 2015. _____ appeared on behalf of the Office of the United
States Trustee. In December 2015 Complainant filed an application to employ _____
and the law firm of _____ (_____), to represent him in the case, and Judge
_____ later granted the application. In February 2016 _____, through attorney
_____, filed an interim application for compensation, which Judge _____
approved.² In March 2016 Judge _____ issued an order granting _____ and
_____ oral motion to withdraw as counsel. _____ then filed a final application
for compensation on behalf of _____.

At a hearing before Judge _____ on April 8, 2016, _____ stated that
_____ had appeared for a deposition during which Complainant began to play a taped
conversation between Complainant and _____, and that Complainant continued to

¹ During the relevant time, Complainant was an attorney admitted to practice in the United States
District and Bankruptcy Courts for the _____ District of _____.

² _____ has been a “panel chapter 7 trustee” in the _____ District of _____.

play the recording for a videographer who was present after _____ stopped the deposition. _____ stated that the conversation was taped without _____ knowledge or consent and constituted a third-degree felony, and he requested that the court either convert the case to a Chapter 7 case or appoint a Chapter 7 trustee. Complainant contended that the conversation was legally recorded, and he stated that _____ had “threatened to use this Court and _____ against [Complainant] to convert to a Chapter 7 and strip [him] of all his assets.” _____ requested that the recording be turned over, and Judge _____ stated he would order that Complainant not publish the recordings until he ruled on whether they were legally made.

On April 13, 2016, Judge _____ entered an order that, among other things: (1) directed Complainant not to publish or disseminate any recordings between him and _____; and (2) instructed the court reporter and videographer not to disseminate any of the records to anyone pending further order of the court. The next day, _____, as a creditor, filed a motion to convert the case to a Chapter 7 case, and other creditors filed joinders to the motion to convert. _____ later withdrew its motion to convert. In May 2016 Complainant filed a motion to employ _____ as his attorney, and Judge _____ granted the motion.

In July 2016 Complainant filed a motion seeking an order allowing him to release the recording to the _____ Police Department and other law enforcement agencies. In the motion, Complainant stated that: (1) on January 13, 2016, he legally recorded a conversation he had with _____ in which _____ threatened him; (2) he filed a complaint with the Police Department alleging _____ threatened him; and (3) the Police Department needed the recording to continue its investigation. Complainant attached an email he sent to a detective with the Police Department in which he: (1) alleged that a legally recorded conversation showed that _____ threatened him; (2) set out quotations of _____ alleged statements; (3) stated that on other occasions and telephone calls _____ stated he would have _____ move to convert the case so Complainant would lose everything; (4) asserted that _____ stated that “_____ [_____] will do whatever he wants, and she get [sic] Judge _____ to go along with it”; and (5) alleged the statements raised questions of corruption and “case fixing” between _____, _____, and Judge _____. On July 11, 2016, Complainant filed a response to the motion to convert the case, stating in part that _____ had threatened that if Complainant did not proceed as _____ wanted, _____ would have the U.S. Trustee get a trustee appointed.

Judge _____ held a hearing on July 13, 2016, at which _____ appeared on behalf of the United States Trustee’s Office. At the hearing, _____ testified that, during Complainant’s deposition of _____, Complainant produced a recording of a conversation they had, which _____ believed was recorded without his consent. Complainant then testified that he recorded certain conversations with _____ because _____ previously had threatened him and that _____ consented to being recorded.

Complainant also stated he believed certain events occurred in another case as a result of “case fixing.”

Judge _____ then stated:

Let me tell you my dilemma. And I’m going to end the hearing now. There’s been allegations that I, personally, am case fixing.

_____, I hereby instruct you to investigate _____, _____, and to the extent you need to investigate me, to do so, in order to ascertain whether there are grounds to refer this matter to the U.S. Attorney’s Office. Do not hesitate to come, have whomever interview me.

But based on these allegations, I hereby recuse myself and transfer the case -- the case will be transferred to Judge _____.

The following exchange with _____ then took place:

[_____]: . . . I’m writing it down about the investigation. If it involves one of the attorneys in our own office, it may be something that’s outside of the local offices.

[Judge _____]: Good point. Same way -- the same reason I’m recusing myself.

[_____]: I understand, Your Honor.

[Judge _____]: I forgot that. So do whatever -- I guess what I’m really instructing you, to do whatever is appropriate in order to investigate the matter. . . .

_____ stated, “And I was going to assign it to another attorney in the office anyway, based on the, you know, allegations, just simply for the same reason you’re talking about, to have the impartiality.” Judge _____ added, “For the record, I don’t fix any cases. . . . But with the allegations, I have no choice, I believe.” Judge _____ issued an order stating that recusal was appropriate and transferring the case to Judge _____.

On July 14, 2016, Judge _____ issued an order setting a hearing to consider approval of Complainant’s disclosure statement, noting in part that the court would “also consider dismissal or conversion at the Disclosure Hearing at the request of any party that has requested such relief in a timely filed objection or on the Court’s own motion.” In August 2016 Judge _____ issued an order noting that Complainant’s motion to release recordings had been withdrawn at a hearing. The order stated that, in any event:

(1) the previous order restricting release of the recordings remained in effect; and (2) Complainant was not to publish or disseminate any recordings between himself and _____. In September 2016 _____ filed a motion to withdraw as Complainant's counsel, and Judge _____ later granted the motion. In October 2016 the Acting United States Trustee filed an amended motion to convert the case to a Chapter 7 case. Later that month, notices of a hearing were issued as to motions to convert the case.

On November 7, 2016, Complainant, proceeding pro se, filed a Fourth Amended Disclosure Statement in which he described the recorded conversation with _____ that took place on January 13, 2016, and included three paragraphs containing quotations of _____ alleged statements during that conversation. A week later, creditors filed objections to the disclosure statement, arguing in part that the inclusion of quotations from the recorded conversation violated the court's prior orders. On November 16, 2016, Complainant filed a Fifth Amended Disclosure Statement, again setting out quotations of _____ alleged statements during the recorded conversation.

At a hearing on November 16, 2016, Judge _____ asked Complainant to respond to the suggestion that he had violated a court order directing that he not publish the recording by quoting the recording in the disclosure statements. Complainant stated that when he met with the Police Department, before the issuance of the order, he "used [his] contemporaneous notes, not the tape recordings." Judge _____ stated, "So are you suggesting that what you put in the disclosure statement is not a quote from the recording, even though it has quotation marks around it?" and Complainant responded, "I believe it's the quotes from my contemporaneous notes, Your Honor, that's correct. Not from the tape recording." The following exchange then took place:

[Judge _____]: Okay. And so you're telling me this is not a word for word transcription, the matters in quotes in subparagraphs A, B and C at the top of page 4, apparently of each of the fourth and fifth disclosure statements, you do not intend that to be a word for word transcription of the recording?

[Complainant]: Your Honor --

[Judge _____]: You need to know that your answer to this question --

[Complainant]: -- without listening --

[Judge _____]: Stop. Stop. Before you answer, I want to tell you something.

If you tell me that is not intended to be a word for word transcription, I am going to listen to the recording. If it's a word for word transcription, I'm

going to immediately convert your case, because that means you're lying to me. Do you understand?

[Complainant]: Sure.

[Judge _____]: Is that intended to be a word for word transcription of the recording in your disclosure statement signed by you?

[Complainant]: I believe it is to be the quotes that I took on my contemporaneous notes, Your Honor.

[Judge _____]: And your contemporaneous notes were, you somehow took word for word notes without relistening to the recording.

[Complainant]: Your Honor, if I listened to the recording, it was probably prior to that. And I --

[Judge _____]: You listened to the recording prior to it being made?

[Complainant]: I didn't change my contemporaneous notes.

[Judge _____]: Contemporaneous to what? The actual conversation?

[Complainant]: The actual conversation.

[Judge _____]: All right. So you're saying you were able to write down all of this during the conversation?

[Complainant]: Yes, Your Honor. And shortly after the conversation, that's correct. Right after.

And if you would read the email I sent to the _____ Police Department, it will say, I'm not allowed to disclose --

[Judge _____]: You should have a seat, now. I will be converting this case immediately.

_____, I do not believe you. If this was not intended to be a word for word representation of the recording, which you were specifically ordered by this Court not to publish, then you should not have included it in your disclosure statement signed by you.

You have specifically violated a written order of this Court, which is cause under Section 1112(b)(4).³ That cause supports conversion of this case. It will be converted immediately. I will be entering the order this afternoon.

Any other questions?

[Complainant]: Your Honor --

[Judge _____]: You are done today, _____. You may appeal the order. Good luck.

Anything else in this case today? Thank you. Court is adjourned.

Also on November 16, 2016, Judge _____ issued an order converting the case to a Chapter 7 case. The next day, _____ was appointed as Chapter 7 Trustee.

On November 30, 2016, Complainant filed a motion for rehearing and reconsideration of the order converting the case, arguing, among other things, that: (1) Judge _____ converted the case without providing him notice, due process, or the chance to introduce evidence; (2) Complainant did not publish the contents of the recording or violate the court's order; (3) Complainant's contemporaneous notes were an accurate and exact, but not a full, transcribed account of the recorded conversation; and (4) the court and U.S. Trustee's Office retaliated against him for whistleblowing, obstructed justice by "killing the criminal investigation ordered by Judge _____," and sought to "bury the tape recordings containing the criminal threats uttered by _____."

At a December 7, 2017 hearing on certain motions, Complainant stated there was an order by Judge _____ for an investigation, and Judge _____ stated, "There is no binding order until it's in writing and entered in the docket." Judge _____ also stated, "I do not have the power to direct anyone but an estate representative to undertake an investigation." Later in the hearing, the following exchange took place:

[Judge _____]: . . . I said I cannot require the United States Trustee to investigate the matter. I have no duty or power.

³ 11 U.S.C. § 1112(b)(1) provides: "Except as provided in paragraph (2) and subsection (c), on request of a party in interest, and after notice and a hearing, the court shall convert a case under this chapter to a case under chapter 7 or dismiss a case under this chapter, whichever is in the best interests of creditors and the estate, for cause unless the court determines that the appointment under section 1104(a) of a trustee or an examiner is in the best interests of creditors and the estate." Subsection (b)(4)(E) states that "cause" includes "failure to comply with an order of the court."

[Complainant]: Well then why did Judge _____ do it?

[Judge _____]: I have no idea, but there is no order.

[Complainant]: He didn't sign the order, but he made the verbal request and told everybody to go out and do everything.

[Judge _____]: I think you should look at _____ Circuit case law. Okay. You can have a seat. Thank you.

On December 8, 2016, Complainant filed a renewed motion for an order allowing him to release the recording to the Police Department and other law enforcement agencies, stating he believed the recording was evidence of criminal activity and that the Police Department was the proper authority to investigate whether the conversation was legally recorded.

At a December 15, 2016 hearing on Complainant's motions to release the recording and for reconsideration of the order converting the case, Complainant provided the court the recording and his notes of the recorded conversation. Complainant argued that _____ consented to the recordings "in person" and that the only evidence in support would be Complainant's testimony. Judge _____ then listened to the recording in his chambers. After that, Complainant testified that _____ stated that if Complainant did not do what _____ wanted: (1) he could have the case converted; (2) the judges were friends of his; and (3) _____ would do whatever he wanted. Complainant also testified that he informed _____ that he would record their telephone conversations and _____ consented to being recorded. He also testified that the statements in his disclosure statements were from his contemporaneous notes from January 13, 2016, not the recording.

On cross-examination, Complainant testified that the quotations in his fourth amended disclosure statement came from his emails to the Police Department. Judge _____ asked why Complainant did not mention those emails when questioned earlier about the source of the quotations in the disclosure statement, and Complainant responded, "I just didn't think about it" and "There's no real reason." Complainant argued that a transcript of the recording would show that what was in the email and in the disclosure statements was different from what was on the recording "because there are certain things that are missing or a couple of words that are out of place or whatever." _____ testified that he never consented to have his telephone conversations recorded.

Judge _____ stated that he had listened to the recording, the recording was admitted in evidence, and the court would retain the recording as part of the record so it could be made available to any appellate court as necessary. Judge _____ described

the recording and stated that he compared the recording to the quotations in Complainant's fourth and fifth amended disclosure statements. Judge _____ stated:

The words in quotations in paragraphs A and B are verbatim from the conversation captured by the recording. On the recording there are additional words spoken, where the quotation in the disclosure statement indicate the same via ellipsis. But each word shown in paragraphs A and B is spoken by _____ on the recording in the same order indicated within the quotation marks in the disclosure statements.

The language in Paragraph C does not occur in the recording. To be clear neither _____, nor Judge _____ are mentioned at all in the recording. I note that the Court has seen no credible evidence that would lead the Court to question in any regard the actions of _____, _____,[⁴] or any member of the staff of the Office of the U.S Trustee in this case. Nor have I seen any credible evidence that would lead the Court to question in any regard the actions of Judge _____ in this case.

Judge _____ then discussed the statute on the illegality of recording conversations in _____ and found that all the elements of the statute were met because Complainant intentionally recorded the conversation, _____ had a reasonable expectation of privacy in the communication, and _____ did not consent to being recorded.⁵ With respect to the testimony on consent, Judge _____ found _____ testimony was credible and Complainant's was not.

Judge _____ then found that if a person records a conversation in violation of the statute, "that person may not reveal the contents of that conversation, even if they have a perfect audio memory or have somehow transcribed by hand the entire conversation verbatim," citing _____ § 934.02.⁶ Judge _____ determined that the

⁴ _____ is a member of the Office of the United States Trustee.

⁵ At the hearing, Judge _____ cited, among other things, _____ § 934.04, but later clarified that he intended to cite _____ § 934.03, which is titled "Interception and disclosure of wire, oral, or electronic communications prohibited." Section 934.03(1) makes it a crime to, among other things, intentionally: (1) intercept any oral communication; (2) use any electronic device to intercept any oral communication; or (3) disclose the contents of an impermissibly intercepted oral communication. Subsection (2)(d) states that it is lawful for a person to intercept an oral communication "when all of the parties to the communication have given prior consent to such interception."

⁶ Section 934.02(7) states, "'Contents,' when used with respect to any wire, oral, or electronic communication, includes any information concerning the substance, purport, or meaning of that communication."

recording and its contents may be used to investigate whether Complainant should be prosecuted for making the recording, and that the court would permit release of the recording to the Police Department and others criminal investigative bodies solely for that purpose. Judge _____ again stated that the recording would remain with the court so it could be tendered to any appropriate appeals court but that it would not be made available to the public.

With respect to Complainant's motion to reconsider the order converting the case, Judge _____ found that the quoted language in the disclosure statements "is exactly the same as that spoken by _____ in the recording." Judge _____ stated it was "obvious" that Complainant took the quoted language from the recording itself and not the notes or emails entered into evidence, which was directly contrary to his testimony under oath. Judge _____ then stated, "Even if [Complainant] had actually taken the language in quotation marks in his disclosure statements from his contemporaneous notes or from his e-mails, the obvious import of the court's orders is that he could not disclose the contents of those conversations. That is exactly what he did in his disclosure statements." He further stated that: (1) the "obvious purpose of the Court's orders was to prevent disclosure of the content of the recordings"; (2) publication of Complainant's "contemporaneous notes or the e-mails he sent to the police was prohibited by the broad proscription reflected in this Court's orders," and (3) it was "not material" that he included only excerpts of the recorded conversation. Judge _____ also stated it was "important to understand that whether or not the recordings in question were made in violation of _____ law has no bearing at all on whether [Complainant] violated orders of this Court."

Judge _____ noted that the order setting the disclosure statement hearing provided that the court would consider dismissal or conversion, and he found Complainant had "ample notice" the case might be converted and received "ample due process." Judge _____ also stated that the court had "no power over any investigation by the United States Trustee or, indeed, any arm of the United States government," and that, in any event, "conversion of the case has no impact at all on any investigation of any of the claims asserted by [Complainant]. If there are such investigations they may continue. Importantly, this Court also has no power to prohibit any such investigation."

After the hearing, on December 16, 2016, Judge _____ issued an order denying Complainant's motion for reconsideration of the order converting the case. On the same day, he issued an order granting in part Complainant's motion to release the recording, stating: (1) the recording could only be used in connection with investigation and prosecution for criminal interception in violation of state law; (2) any officer from the Police Department could obtain a copy of the recording from the clerk; and (3) Complainant was not to destroy or publish the recording or its contents in any manner, except he shall provide materials to the Police Department if requested.

On December 17, 2016, Complainant filed a motion to disqualify Judge _____ in which he stated: (1) “Not only does Judge _____ have an apparent conflict with the accusations levied against Judge _____, his close judicial colleague, but with the statements of _____ which implicate himself as well”; (2) Judge _____ “refusal” to release the recordings for the purpose of investigating _____, the U.S. Trustee’s Office, and the court “expose a bias and conflict of interest that mandate recusal”; (3) and Judge _____ actions at the November 16 and December 15, 2016 hearings “evidence a prejudice and predetermined decision to attack and suppress [Complainant’s] attempts to have _____ threats and allegations or corruption and case fixing investigated.”

On December 27, 2016, the Police Department confirmed its receipt of the recording. On January 3, 2017, Complainant filed an amended motion to reconsider the order denying his initial motion to reconsider the order converting the case, generally reiterating his arguments that he did not violate the court’s order and that the court had acted improperly. Several days later, Judge _____ denied the amended motion to reconsider. Complainant filed a notice of appeal and a motion to extend the time to appeal certain orders. He also filed a motion to remove the Chapter 7 Trustee. Judge _____ later denied the motion to remove the trustee and denied a motion to reconsider that order.

On January 24, 2017, Judge _____ entered an order finding that Complainant’s notice of appeal was untimely as to the order converting the case, but timely as to the order denying the motion to reconsider the conversion order and the order pertaining to the audio recording. The district court later dismissed the appeal for lack of jurisdiction, finding that the notice of appeal was untimely and also noting that the case was due to be dismissed because of Complainant’s failure to respond to an order to show cause.

Meanwhile, on January 25, 2017, Complainant filed in bankruptcy court a motion to transcribe the audio recording, requesting that the court appoint an independent court reporter to transcribe the recording for use in motions and appeals. On January 26, 2017, following a hearing, _____ entered an order denying the motion to disqualify. The next day, Judge _____ issued a “Further Order Regarding Use of Audio Recording,” granting Complainant’s motion for transcription in part and finding it was appropriate for Complainant to have access to a copy of the recording to facilitate his prosecution of his appeal and his response in any investigation or prosecution. Judge _____ found it was “not necessary or appropriate” to cause transcription of the audio recording for purposes of appeal and reiterated the restrictions from an earlier order, with the exceptions being that Complainant and any counsel he retained could listen to the recording in connection with his appeal and any investigation.

Complainant filed a revised second amended motion to transcribe the audio recording in which he alleged, among other things, that Judge _____ was “not being

forthcoming about the content of the audio recording in an effort to influence the outcome of this matter, discredit [Complainant], and deprive him” of millions of dollars in assets. In late January 2017 Judge _____ denied the amended motion, noting in part that Complainant could prepare an unofficial transcript of the recording for inclusion in the record on appeal.

On February 14, 2017, Complainant filed a motion to vacate the conversion order and to dismiss the case, alleging that Judge _____ committed fraud and intentionally misrepresented the content of the recording to obstruct investigations. At a hearing on March 29, 2017, Judge _____ denied the motion on various grounds, incorporating multiple previous rulings, and he entered an order denying the motion the next day.

After various proceedings, on October 26, 2017, Complainant filed an emergency motion to disqualify Judge _____ in which he, among other things, (1) stated that he had obtained two independent certified transcripts of the recorded telephone conversation; (2) asserted that, contrary to Judge _____ statements, Complainant’s fifth amended disclosure statement was not a “verbatim” reproduction of the recording; (3) alleged that the transcripts showed that Judge _____ had misrepresented material evidence in an effort to cover up criminal activity and obstruct an ongoing criminal investigation into the actions of Judge _____, Judge _____, _____, and _____; and (4) alleged that Judge _____ falsely accused Complainant of lying. Complainant also argued that Judge _____: (1) violated Complainant’s due process rights by converting the case without giving him notice or an opportunity to be heard; and (2) exceeded his authority in referring Complainant for criminal investigation.⁷

On November 2, 2017, Judge _____ entered an order denying the motion to disqualify. In the order, Judge _____ stated that Complainant had been given the opportunity to present evidence in support of his allegations that there was a conspiracy against him involving members of the court, the Office of the United States Trustee, and his former counsel, but he had “never been able to present any evidence, let alone competent evidence, to support his allegations.” Judge _____ stated that the court concealed nothing and did not lie or intentionally misrepresent any fact, noting the recording itself was in the record and available for review by any appellate court.

With respect to the allegation that Judge _____ exceeded his authority in referring the matter to the police, Judge _____ stated that the referral of potential criminal activity “is not only well within the authority of the Court, but is consistent with the Court’s ethical duties both as a member of the bar and as a member of the federal judiciary.” He then noted that the motion to disqualify was filed on the eve of trial in an adversary proceeding and stated it was “not appropriate to use a motion to disqualify the

⁷ Complainant filed the motion to disqualify and other motions in both the main bankruptcy case and in related adversary proceedings.

presiding judge as a litigation tactic.” Judge _____ found that Complainant violated court orders by providing a copy of the recording to the transcription services, by filing copies of the transcripts, and by including text from the transcripts in his motion, and he stated that he would issue a show cause order to Complainant. Finally, in light of the earlier orders restricting use of the recording, Judge _____ directed the clerk to restrict access to the motion to disqualify and create a redacted copy of the motion.

On November 14, 2017, Judge _____ issued an order directing Complainant to show cause why he should not be: (1) held in contempt and sanctioned for failure to comply with court orders; and (2) sanctioned for filing repetitive requests for the same relief. On November 16, 2017, Complainant filed a notice of appeal and a motion for rehearing and reconsideration with respect to the order denying his motion to disqualify. The next day, Judge _____ entered an order denying the motion for rehearing and reconsideration and directed the clerk to restrict access to motion in light of the court’s previous orders. On November 19, 2017, Complainant filed an amended motion for rehearing and reconsideration, which Judge _____ denied the next day. The district court ultimately dismissed the appeal of the order denying the motion to disqualify due to Complainant’s failure to timely file his brief, and this Court later dismissed his appeal for lack of jurisdiction.

At a December 7, 2017 hearing on the show cause order, Complainant asserted that Judge _____ lied about the contents of the recording and that _____ had undue influence over Judge _____. He also stated he had an email from Judge _____ law clerk informing the Police Department that there was nothing in the record sealing a recording, and he contended that the law clerk should have been more forthcoming in the email.

On December 12, 2017, Judge _____ entered an order holding Complainant in contempt of court for knowingly violating court orders and sanctioning him for his “scandalous serial filings,” noting he was “an experienced lawyer, admitted to practice before the District Court and this Court.” With respect to the email from Judge _____ law clerk, Judge _____ stated, “There is literally no evidence to suggest Judge _____ law clerk was dishonest in any way. That [Complainant] would malign a law clerk, responding in apparent good faith to an inquiry from law enforcement, is indicative of his approach to this case.”

Judge _____ found that Complainant, on multiple occasions, had purposely violated the court’s orders restricting use of the recording, and he stated that a review of the history of the case “leads to the inescapable conclusion that [Complainant] has acted in bad faith in this case.” Judge _____ found that Complainant submitted filings primarily to harass parties in interest and the court. He stated that Complainant had “shown a flagrant disregard for orders of this Court,” and had “pursued serial litigation, making shocking and unsupported allegations against various parties in interest,

including judges of this Court.” Judge _____ determined that only a punitive sanction would cause Complainant to comply with court orders and discontinue his “harassing behavior.”

The order: (1) suspended Complainant from the practice of law before the bankruptcy court for a period of five years; (2) indefinitely suspended his privileges to file documents electronically; (3) directed the clerk not to accept any document from him unless the court gave permission; (4) directed him to deliver to the clerk all copies of the recording of the January 13, 2016 conversation with _____ and all transcripts of that recording; and (5) directed him to pay _____ reasonable attorney’s fees and costs incurred in connection with the show cause order. Judge _____ also recommended that the district court suspend Complainant from the practice of law for 5 years and order a punitive monetary sanction not less than \$10,000.⁸ Finally, Judge _____ noted that a copy of the order would be forwarded to the _____ Bar, as “a number of _____ actions likely constitute violations of the rules of ethics governing members of the bar.”⁹ After various additional proceedings, in January 2019 Judge _____ issued an order granting Complainant a discharge.

The record also shows that in August 2016, during the main bankruptcy case, a creditor initiated an adversary proceeding against Complainant. In August 2017 the creditor filed an amended complaint against Complainant, alleging that in 2012 he “embarked on a pattern of improper and self-serving conduct adverse” to its interests, and that his actions included embezzlement, civil theft, and conversion. After various proceedings, in May 2018 Judge _____ found that Complainant had taken actions that constituted civil theft under _____ law, and in October 2018 Judge _____ entered a final judgment in favor of the creditor against Complainant in an amount over \$2 million.

The record also shows that in January 2018 Complainant and certain companies filed in state court a civil action against the Subject Judges and others, raising various claims including fraud, conspiracy, collusion, and misrepresentation, and case was removed to federal court in February 2018. After that, the district court entered an order substituting the United States as the proper party in place of the Subject Judges and other individually named federal defendants. In July 2018 the district court entered an order dismissing the case as to the United States for lack of jurisdiction and remanding the remaining claims against the state law defendants to the state court.

⁸ In June 2018 the district court suspended Complainant from the practice of law for 5 years and imposed sanctions against him in the amount of \$10,000.

⁹ According to the _____ website, in July 2018 the Supreme Court of _____ held Complainant in contempt for failure to respond to an Order to Show Cause and suspended him from the practice of law as a sanction.

Complaint

Allegations Against Judge _____

In his Complaint of Judicial Misconduct or Disability, Complainant alleges that Judge _____: (1) “intentionally l[ied] about material evidence to impede, obstruct and kill two federal and state criminal investigations into corruption and case fixing”; (2) intentionally lied and misrepresented material evidence “to obstruct, protect and give-obtain special treatment for fellow judges, friends, and colleague[’s], including obstructing criminal investigation(s) that would engulf Judge _____ own” misconduct; (3) retaliated against Complainant for his “whistle blowing allegations” by converting his case to a Chapter 7 case and seizing millions of dollars in Complainant’s asserts to “punish” him and prevent him from defending himself, hiring counsel, or filing necessary appeals; and (4) is “covering up credible evidence of corruption and case fixing” in the bankruptcy court.

Complainant also alleges that Judge _____: (1) reviewed evidence in camera so he could misrepresent the evidence; (2) deliberately lied about the contents of the recording to obstruct the investigation; (3) sealed and covered up evidence to prevent law enforcement agencies from investigating his own and others’ criminal actions; (4) redacted documents “to cover up and protect himself from multiple lies about evidence in an attempt to discred[it]” Complainant; (5) falsely accused Complainant of violating a state statute and being untruthful to the court; and (6) provided his order to the _____ Bar to retaliate against Complainant.

He asserts that Judge _____ colluded with the trustee “to enable and encourage the Trustee to lie and discredit” Complainant. He alleges that Judge _____ was not impartial, failed to uphold the integrity and independence of the Judiciary, failed to avoid impropriety and the appearance of impropriety, and that his actions resulted in a substantial and widespread lowering of public confidence in the courts. Finally, Complainant asserts that Judge _____ “disingenuous comments in court and his orders, that he didn’t know of the two (2) ongoing criminal investigations raises serious questions about the misconduct”

Allegations Against Judge _____ and the Other Subject Judges

Complainant alleges that in April 2016 Judge _____ sealed the audio recording of the January 2016 conversation and prohibited its publication “to protect his long time friend and Panel Trustee, _____, who had bragged of his power and undue influence over Judge _____, the Bankruptcy Court, the U.S[.] Trustee’s Office, and bragged that he would help Judge _____ with ‘a safe landing upon his retirement’ in _____.”

Complainant also states that in July 2016 Judge _____ referred a criminal investigation into allegations of corruption and case fixing in the bankruptcy court to the United States Trustee's Office. Complainant alleges that Judge _____ law clerk, through either "neglect or fraud," misrepresented Judge _____ April 2016 order and misled a detective about the existence of a recorded telephone call between Complainant and _____.

Complainant asserts that the Subject Judges and their law clerks and judicial assistants "frequently have lunch together, discuss cases and parties that appear before them" and that "of course they would talk about Judge _____ ordering and referring a criminal investigation into the Bankruptcy Court's corruption and case fixing allegations." Complainant alleges that, by using the bankruptcy court to extort money from him and his company, the Subject Judges and others conspired to threaten him to drop a complaint he had filed against two individuals. He attached various documents to his Complaint, including a May 2016 email from Judge _____ law clerk to a detective with the Police Department stating that no recording had been filed with or received by the court and later sealed. He also attached incident reports from the Police Department.

Discussion

Rule 4(b)(1) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings of the Judicial Conference of the United States, "Allegations Related to the Merits of a Decision or Procedural Ruling," provides in part that "[c]ognizable misconduct does not include an allegation that calls into question the correctness of a judge's ruling, including a failure to recuse." The "Commentary on Rule 4" states in part:

Rule 4(b)(1) 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 authority by ensuring that the complaint procedure is not used to collaterally call into question the substance of a judge's decision or procedural ruling. Any allegation that calls into question the correctness of an official decision or procedural ruling of a judge — without more — is merits-related.

Most of Complainant's allegations concern the substance of the Subject Judges' official actions, rulings, findings, and orders in the bankruptcy cases. To that extent, the allegations are directly related to the merits of the Subject Judges' decisions or procedural rulings.

Judge _____

After hearing in-court testimony, Judge _____ made a credibility determination, and Complainant challenges it by asserting that the judge lied about the contents of the recording. That is a merits-related claim. Additionally, Judge _____ found that, even if the quotations in Complainant's disclosure statements came from his contemporaneous notes or emails to the Police Department, as Complainant claimed, he still violated "the broad proscription" of the court order that prohibited him from publishing the recording. Complainant's assertions to the contrary do not allege cognizable misconduct but instead quarrel with Judge _____ rulings.

To the extent Complainant's other allegations are not merits-related, they lack sufficient evidence to raise an inference that Judge _____ acted with an illicit or improper motive, lied about or misrepresented evidence, acted to obstruct an investigation, retaliated against Complainant, falsely accused Complainant of a crime or of being untruthful, was not impartial, or colluded with a trustee.

Judge _____ and the Other Subject Judges

As for Complainant's allegation of "case fixing," it appears to stem from his assertion that _____ stated he could control the trustee's actions and that Judge _____ would go along with the trustee. That unsupported assertion lacks sufficient evidence to raise an inference that any of the Subject Judges engaged in case fixing. His remaining claims against the Subject Judges are based on allegations lacking sufficient evidence to raise an inference that any of them were part of a conspiracy, acted to obtain special treatment for friends or colleagues, 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**.



Chief Judge