

CONFIDENTIAL

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

Judicial Complaint No. 11-19-90030

**IN THE MATTER OF A COMPLAINT FILED BY
_____ AND _____**

FILED
U.S. COURT OF APPEALS
ELEVENTH CIRCUIT

AUG 08 2019

David J. Smith
Clerk

IN RE: The Complaint of _____ and _____ against _____, United States Bankruptcy Judge for the United States 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

_____ and _____ (“Complainants”) have 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 January 2019 _____ filed a voluntary petition for Chapter 7 bankruptcy. The United States Trustee filed a motion to dismiss the case with prejudice for two years, arguing that the debtor had abused the bankruptcy process and had acted in bad faith to the detriment of creditors. The same day, a notice was issued setting a hearing on the motion to dismiss for February 27, 2019. In March 2019 the Subject Judge issued an order noting a hearing had been held on February 28, 2019, granting the United States Trustee’s motion to dismiss, and dismissing the case with prejudice for two years.

After that, Complainants filed a motion to recuse the Subject Judge, alleging in part that they never received notice of the February 28, 2019 hearing, and that the Subject Judge held an *ex parte* hearing on that date. The Subject Judge then entered an order denying the motion to recuse. The order stated there was no *ex parte* communication and noted the dismissal order incorrectly stated the date of the hearing was February 28 when it actually took place on February 27. The order directed the United States Trustee to submit an amended order to correct the date of the hearing. The Subject Judge found that the hearing was duly noticed with adequate time for _____ to coordinate her attendance or seek a continuance. After that, there were additional proceedings in the case.

Complaint

In their Complaint of Judicial Misconduct or Disability, Complainants allege that the Subject Judge held an ex parte hearing on February 28, 2019, and they assert that they were never notified of it. They contend that the Subject Judge violated two canons of the Code of Conduct for United States Judges. Complainants also take issue with the actions of individuals other than the Subject Judge. They attached the Subject Judge's dismissal order to the Complaint.

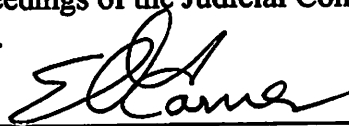
Discussion

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.

To the extent Complainants' allegations concern the substance of the Subject Judge's official actions, findings, rulings, and orders in the case, the allegations are directly related to the merits of the Subject Judge's decisions or procedural rulings. Complainants' remaining claims are based on allegations lacking sufficient evidence to raise an inference that the Subject Judge engaged in improper ex parte communications, violated the Code of Conduct for United States Judges, or otherwise engaged in misconduct.

The allegations of this Complaint are "directly related to the merits of a decision or procedural ruling," JCDR 11(c)(1)(B), and the Complaint "is based on allegations lacking sufficient evidence to raise an inference that misconduct has occurred or that a disability exists," JCDR 11(c)(1)(D). For those reasons, pursuant to Chapter 16 of Title 28 U.S.C. § 352(b)(1)(A)(ii) and (iii), and Rule 11(c)(1)(B) and (D) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings of the Judicial Conference of the United States, this Complaint is **DISMISSED**.



Chief Judge