

CONFIDENTIAL

FILED
U.S. COURT OF APPEALS
ELEVENTH CIRCUIT

OCT 28 2019

David J. Smith
Clerk

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

Judicial Complaint No. 11-19-90065

IN THE MATTER OF A COMPLAINT FILED BY _____

IN RE: The Complaint of _____ against United States Bankruptcy Judge
_____ of 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

_____ (“Complainant”) has filed this Complaint against United States Bankruptcy Judge _____ (the “Subject Judge”), pursuant to Chapter 16 of Title 28 U.S.C. § 351(a) and the Rules for Judicial-Conduct and Judicial-Disability Proceedings of the Judicial Conference of the United States (“JCDR”).

Background

The record shows that in 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. In February 2019 a creditor filed a motion for in rem stay relief, noting that Complainant had filed multiple previous bankruptcy cases and arguing that Complainant and _____ had worked together to frustrate and delay its foreclosure on certain real property. The next month, after a hearing, the Subject Judge issued an order granting the motion to dismiss and dismissing the case with prejudice for two years.

After that, Complainant and _____ filed a motion to recuse the Subject Judge, arguing in part that they never received notice of the hearing on the motion to dismiss and that the Subject Judge held an improper ex parte hearing. Complainant and _____ also filed a motion to dismiss the creditor’s motion for relief from stay in which they argued that the creditor’s state court foreclosure judgment was obtained through fraud, and they requested that the court vacate the judgment.

Later in March 2019, the Subject Judge entered an order denying the motion to recuse, finding in part that there was no ex parte communication and the hearing was duly noticed with adequate time for _____ to coordinate her attendance or seek a continuance. In April 2019, after a hearing, the Subject Judge entered an order granting the creditor’s motion for in rem stay relief and stating that the filing of a new bankruptcy

petition by _____, Complainant, or any transferee would not trigger the automatic stay for four years with respect to the real property described in the motion.

After that, Complainant filed a motion for relief from the order, arguing that the court lacked jurisdiction over him because he did not sign the bankruptcy petition or submit to the jurisdiction of the court and that the order was void as a denial of his constitutional due process rights. The Subject Judge entered an order denying the motion for relief, noting that the order pertained to the subject property over which it had jurisdiction. Complainant filed a notice of appeal, and the Subject Judge dismissed the appeal because the notice was untimely. Complainant later filed in the district court a "Motion for Emergency Appeal," and a district judge dismissed the appeal as untimely filed.

Complaint

In his Complaint of Judicial Misconduct or Disability, Complainant takes issue with the Subject Judge's order granting the creditor's motion for stay relief, stating that because Complainant was not a party to the case, the Subject Judge "ruled in advance beyond her Jurisdiction" in violation of 11 U.S.C. § 362, rules governing automatic stays, and his constitutional rights. He asserts that the order shows that the Subject Judge was biased, prejudiced, and helped Complainant's neighbor "steal" his home through a judgment procured through fraud and "Judicial Corruption." He also alleges that the Subject Judge showed bias, prejudice, and an abuse of discretion by "turning a blind eye" to fraud on the court and rewarding the party who committed the fraud.

Complainant then states he was in court to support his ex-wife _____ because she is disabled. He notes that _____ stated at a hearing in March 2019 that she "made an error and was supposed to file as a creditor," and he contends that the Subject Judge "did not care at all, and seemed to have an already set agenda." Complainant also asserts that when he tried to speak, the Subject Judge "was quick to shut [him] up and protect the other side from the judgment that was procured through Fraud on the Court." He complains that the Subject Judge abused her discretion and "allowed a guilty party to complete the foreclosure action" even though the debtor made a showing of fraud on the court.

Complainant states the Subject Judge ignored the _____ motion to dismiss the creditor's motion for relief from stay, which violated _____ due process rights and right to be heard. He alleges that the Subject Judge violated two canons of the Code of Conduct for United States Judges by failing to uphold the integrity and independence of the judiciary and failing to perform her duties fairly and impartially. He asserts that a reasonable person would "firmly believe" that the Subject Judge "has been influenced to make the decisions she has made due to being very impartial, very Bias, Very Prejudicial and corrupted" He attached documents to his 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 Complainant’s 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. Complainant’s remaining claims are based on allegations lacking sufficient evidence to raise an inference that the Subject Judge was biased or prejudiced against him or _____ or in favor of others, was not otherwise impartial, 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