

FILED
U.S. COURT OF APPEALS
ELEVENTH CIRCUIT

DEC 23 2019

David J. Smith
Clerk

CONFIDENTIAL

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

Judicial Complaint No. 11-19-90105

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 March 2019 Complainant filed a pro se voluntary petition for Chapter 13 bankruptcy. A notice of incomplete and/or deficient filings was then issued, noting that Complainant had not filed various documents. On March 25, 2019, Complainant filed a motion for an extension of time to respond to the notice of incomplete and/or deficient filings, seeking an additional 30 days.

The same day, the Subject Judge entered an order abating the motion for an extension, finding it was deficient because a signed and dated proof of service was not filed as required by a local rule. Two days later, the Subject Judge entered an order setting aside the order abating the motion for an extension, stating the previous order was entered in error. The next day, on March 28, 2019, the Subject Judge entered an order granting Complainant’s motion for an extension and directing him to file all required schedules, statements, and a Chapter 13 plan by April 8, 2019.

On April 10, 2019, Complainant filed a response to the order granting his motion for an extension, stating in part that his original request for a 30-day extension would have made the deadline April 22, 2019, and requesting that the deadline be moved to April 22, 2019. On April 16, 2019, the trustee filed a motion to dismiss the case due to Complainant’s failure to attend the meeting of creditors and to provide required information. On April 24, 2019, the Subject Judge entered an order dismissing the case without prejudice, finding Complainant did not file the required documents by the April 8, 2019 deadline and noting that, after the deadline, he filed a request to extend the

deadline to April 22, 2019. Although the order was entered on April 24, 2019, it was dated April 23, 2019.

On April 25, 2019, Complainant filed a response to the trustee's motion to dismiss in which he requested an extension of time to correct the remaining deficiencies. On May 8, 2019, he filed, among other things, a motion to vacate the order dismissing the case in which he argued the Subject Judge must disqualify himself because his impartiality might reasonably be questioned. He also filed a motion to disqualify the Subject Judge and attached a document¹ in which he alleged the Subject Judge: (1) "wrongfully dismissed" the case after Complainant provided him a courtesy copy of a filing; (2) acted with "specific intent to engage in bankruptcy fraud, obstruction of justice, and to deprive [Complainant] of rights under color of law"; (3) "likely backdated" the order dismissing the case after reading Complainant's courtesy pleading; (4) violated 18 U.S.C. § 4 (Misprision of felony) because he failed to report the criminal use of Complainant's personal identification information and violated 18 U.S.C. § 242 (Deprivation of rights under color of law); (5) entered orders that showed confusion, "which is a concern when the judge is elderly"; and (6) calculated an extension of time incorrectly.

Two days later, Complainant filed an amended motion to vacate the order dismissing the case, arguing that a reasonable person would conclude that a creditor had undue influence on the proceedings resulting in a fraud upon the court. On May 17, 2019, the Subject Judge issued an order granting Complainant's amended motion to vacate the order dismissing the case and directed Complainant to provide various documents and pay filing fee installments within 30 days. The same day, the Subject Judge issued an order denying the motion to disqualify.

After additional proceedings, in July 2019 Complainant filed a second motion to disqualify the Subject Judge, raising allegations pertaining to the Subject Judge's conduct at a trial, and the Subject Judge later denied the motion. Complainant appealed that order, and the Subject Judge later dismissed the appeal due to Complainant's failure to pay the filing fee. In October 2019 Complainant filed a motion to voluntarily dismiss the case, and the Subject Judge entered an order and amended order dismissing the case. Complainant appealed.

Complaint

In his Complaint of Judicial Misconduct or Disability, Complainant first contends that the Subject Judge "wrongly dismissed" his bankruptcy case after he emailed the Subject Judge a courtesy copy of his response to the trustee's motion to dismiss on April 23, 2019. Complainant alleges the Subject Judge "seized the opportunity to backdate his order dismissing" the case "based on information in [Complainant's] pleadings that

¹ Complainant attached the same document to his Complaint of Judicial Misconduct or Disability.

impeached his order.” He asserts the Subject Judge “entered the back-dated order either for spite, to benefit [a creditor], or to help his fellow _____ Bar members, or because he is a psychopath.” Complainant states he believes the Subject Judge’s “actions show evidence of his specific intent to engage in bankruptcy fraud, obstruction of justice, and to deprive [Complainant] of rights under color of law.” He asserts, “With malice aforethought, [the Subject Judge] knowingly entered falsehoods on the record to harm” Complainant in the order dismissing the case. He also complains that the Subject Judge failed to recuse himself from the case.

Next, Complainant alleges that several orders the Subject Judge entered “show he is unable to discharge all the duties of office by reason of mental or physical disability.” He asserts the orders “show confusion and errors which is a concern when the judge is elderly.” Complainant states he does not know the Subject Judge’s age but that “stories published online” suggest he is approximately 73 years old. Complainant then states, “Depending on how disability is defined, [the Subject Judge] could be disabled with a mental disability like dementia, or a physical disability affecting his brain such as a brain tumor.”

In support of this allegation, Complainant identifies the following three orders: (1) the March 25, 2019 order abating the motion for an extension; (2) the March 27, 2019 order setting aside that order; and (3) the March 28, 2019 order granting the motion for an extension. With respect to the third order, Complainant contends the Subject Judge “calculated the extension of time incorrectly” and that the “ongoing misconduct and/or disability necessitated another pleading.” In conclusion, Complainant states the Subject Judge engaged in misconduct, suffers from a mental or physical disability, and must be immediately removed from office to protect the public and ensure the integrity of the courts. He attached various documents to his Complaint. In one attachment, he alleges the Subject Judge violated 18 U.S.C. §§ 4 and 242.

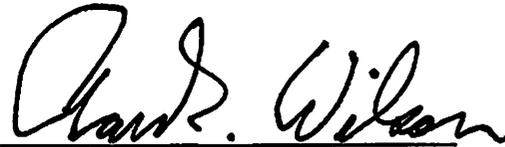
Discussion

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, including his failure 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 acted with an illicit or improper motive, committed a crime, suffers from a mental or physical disability, 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**.

A handwritten signature in black ink, appearing to read "David J. Wilson". The signature is written in a cursive style with a large initial "D".

Acting Chief Judge