

**CONFIDENTIAL**

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

**Judicial Complaint No. 11-19-90122**

**IN THE MATTER OF A COMPLAINT FILED BY \_\_\_\_\_**

FILED  
U.S. COURT OF APPEALS  
ELEVENTH CIRCUIT

MAY 06 2020

David J. Smith  
Clerk

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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.

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**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 April 2014 a company filed a voluntary petition for Chapter 11 bankruptcy. The next month, the United States Trustee filed a notice of the appointment of an official committee of unsecured creditors (the Committee), and Complainant was appointed chairperson of the Committee. In April 2015 the Committee filed an emergency motion for appointment of a Chapter 11 Trustee, alleging in part that, after filing the Chapter 11 petition, the debtor’s management secretly transferred hundreds of thousands of dollars to the debtor’s owner and Chief Financial Officer (CFO). Following a hearing, the Subject Judge entered an order directing the appointment of an examiner who would investigate the allegations of fraud and misconduct.

After the examiner issued an interim report, the debtor filed a Chapter 11 plan in June 2015. The next month, the examiner issued a second report analyzing the Committee’s allegations and making various findings, including that certain transactions should have been disclosed to the court. In September 2015 the Committee filed objections to the Chapter 11 plan’s exculpations and releases, arguing in part that the circumstances that gave rise to the appointment of an examiner favored narrowly tailored exculpations and releases. In January 2016 the Subject Judge entered an order confirming the Chapter 11 plan with modifications. After additional proceedings, in December 2018 the Subject Judge entered a final decree closing the case.

## Complaint

In his Complaint of Judicial Misconduct or Disability, Complainant alleges that “fiduciaries in a bankruptcy estate” made false statements to the bankruptcy court and Department of Justice and that the United States Trustee and United States Attorney in the district have “done absolutely nothing to enforce the law.” He requests that “these authorities” be compelled to bring charges or “put in place someone who will bring charges now.”

Complainant states that he informed the bankruptcy court, United States Trustee, and United States Attorney that the debtor’s owner and CFO each took “kickbacks” during the bankruptcy proceedings, and informed the United States Trustee and United States Attorney that the CFO improperly increased his wife’s salary during the case. He alleges the debtor’s owner and CFO made false statements and committed crimes during the case, and he asserts that the Subject Judge, Trustee, and Department of Justice “did absolutely nothing” about it. He asks, among other things, “was someone paid off?”

## 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 “paid off” 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**.

  
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Chief Judge