

CONFIDENTIAL

BEFORE THE CHIEF JUDGE
OF THE ELEVENTH JUDICIAL CIRCUIT

Judicial Complaint No. 11-20-90016

FILED
U.S. COURT OF APPEALS
ELEVENTH CIRCUIT

MAY 19 2020

David J. Smith
Clerk

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 April 2019 Complainant filed a voluntary petition for Chapter 13 bankruptcy. The next month, _____, on behalf of her law firm, entered a notice of appearance as an attorney for secured creditor _____ (_____). Complainant then filed a Chapter 13 plan, and _____ filed an objection to confirmation of the plan.

In July 2019 Complainant filed an objection to a proof of claim filed by _____, alleging it was fraudulent because it falsely stated that _____ (_____) was acting on behalf of _____ as the secured creditor holding a lien on his home. He alleged, among other things, that _____ and its attorney, _____, falsely stated that _____ was the trustee for a certain pooling servicing agreement. He attached a Proof of Claim filed by _____ on July 1, 2019, stating that _____ was the current creditor and _____ was the servicer.

Later in July 2019 Complainant filed a motion for referral to mortgage modification mediation, and the next month, the Subject Judge granted the motion. In August 2019 _____ filed a response to Complainant’s objection to its Proof of Claim, arguing that a state court foreclosure judgment in _____ favor established the validity of its lien on the subject property. Later in August 2019 Complainant filed a motion for contempt against _____ and _____ law firm for fraud, filing a false proof of

claim, and violating an order of discharge, and also filed a motion for contempt against another attorney who represented another creditor.

At a hearing in September 2019, the Subject Judge, among other things, overruled Complainant's objection to _____ Proof of Claim. The Subject Judge then entered an order noting that the objection was overruled for the reasons stated at the hearing and that the "Court in its discretion may file written findings of facts and conclusions of law at a later date." Complainant filed a motion for reconsideration, which the Subject Judge denied in October 2019.

Complainant filed a motion to compel _____ to comply with discovery-related subpoenas, and _____ filed a motion for a protective order. The Subject Judge entered orders granting in part and denying in part both the motion to compel and motion for protective order. In December 2019 the Subject Judge entered an order determining on its own motion that _____ should be relieved of its obligation to mediate with Complainant due to his unwillingness to mediate with _____ servicer, _____. Later that month, Complainant filed a motion to convert the case to a Chapter 7 case, and the Subject Judge granted the motion and converted the case.

In January 2020 Complainant filed a motion for clarification of the order relieving _____ of its mediation obligation, arguing that the order lacked a legal basis other than to protect _____ and _____ and cover up fraudulent activities. The Subject Judge later denied the motion for clarification, finding that the requested relief was unnecessary. Complainant also filed a motion to recuse the Subject, raising multiple allegations of criminal activity, improper motives, and other misconduct, and asserting that the Subject Judge had a "powerful emotional bond" with _____.

In late January 2020 the United States Trustee filed a motion objecting to entry of a discharge due to a previous discharge Complainant had been granted, and the Subject Judge entered an order granting the motion and ordering that none of Complainant's debts, obligations, or liabilities was discharged. Complainant filed a motion for reconsideration, which the Subject Judge denied based on a statutory provision prohibiting entry of a discharge because the current case had been filed within eight years of the date of a previous case.

In April 2020 the Subject Judge entered an order denying the motion to recuse, finding that she would not disqualify herself "based on what appears to be a pattern of judge shopping," and noting that the court would not entertain collateral attacks on the state court judgment. The Subject Judge also stated that the allegation that she had an emotional bond with _____ was "pure fabrication." There has been additional activity in the case.

Complaint

In his Complaint of Judicial Misconduct or Disability, Complainant alleges that the Subject Judge: (1) failed “to administer and enforce the Bankruptcy Code”; (2) “acted with retaliation and bias”; (3) was part of a criminal association to cover up fraud on the court; (4) violated the Code of Conduct for United States Judges; (5) received a bribe “from corporate Bank and her emotional bond friend,” _____; (6) “punished” Complainant by allowing _____ to falsely act as a creditor on behalf of _____; (7) conspired to abuse the legal system; (8) allowed a non-creditor make misrepresentations and file a false proof of claim; (9) ignored all evidence showing that _____ and _____ were not part of a certain pooling serving agreement; (10) defrauded and abused the bankruptcy system; and (11) issued “malicious orders” in the case.

Complainant asserts that the “case arises out of the infliction, and subsequent cover-up, of a series of retaliatory action[s] by” the Subject Judge “in order to protect” _____ and _____. He states that _____ misrepresented itself as secured creditor _____ and committed, among other things, fraud on the court, and he contends that _____ falsely claimed to be _____ attorney in order to file a false proof of claim. Complainant asserts that _____ had a “‘Significant and Disproportionate Influence’ on the Subject Judge based on “a powerful emotional bond” that caused “delirium” and prevented the Subject Judge from impartially administering justice and keeping the decorum of the court.

Complainant contends that the Subject Judge allowed the false Proof of Claim based on a fraudulent judgment _____ obtained in state court and “maliciously” disregarded his objection to the Proof of Claim. He asserts that the Subject Judge used her position on the bench to act as attorney for _____ and _____. He also contends that the Subject Judge issued a “malicious and crazy” order that allowed _____ to reopen a closed case in another court and to annul a stay entered in that case.

Complainant complains that the Subject Judge stated in an order that the court in its discretion may file written findings of fact and conclusion of law, and he alleges that the Subject Judge issued a malicious order failing to hold _____ and _____ in contempt for their willful violations of court orders. He complains that the Subject Judge decided a contested matter, the motion for contempt, without a hearing to avoid exposing a fraudulent matter in open court, which constituted a “cover up.” He asserts that, during mediation, the Subject Judge tried to force him to agree to and sign a fraudulent mortgage mediation in which _____ falsely claimed to be the servicer of the loan.

Complainant contends that the Subject Judge took more than five months to sanction another attorney for his violation of the discharge, “[j]ust waiting for [the] case to get dismissed, to let her friend attorney . . . get [a]way unpunished.” He alleges that the Subject Judge exhibited a “pattern of misconduct, bias and retaliation” that prevented him from “demount[ing]” _____ and _____ false claim. Finally, he states that the

Subject Judge's "misconduct and criminal association, is whether She is not mentally stable to conduct Bankruptcy Court's businesses, or [the Subject Judge] is engage[d] in the practice of abuse the judicial system for personal and criminal 'dirty' business." He attached various 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. Apart from the decisions or procedural rulings with which Complainant takes issue, he provides no credible facts or evidence in support of his claims that the Subject Judge acted with an illicit or improper motive, committed crimes, was not impartial, had a conflict of interest, received a bribe, violated the Code of Conduct for United States Judges, suffered from a disability, acted for personal gain, 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