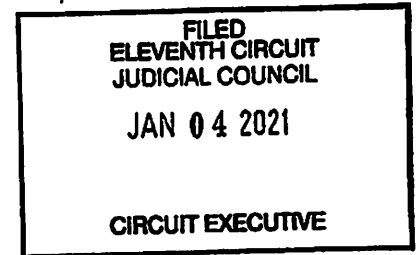


**FOR THE JUDICIAL COUNCIL
OF THE ELEVENTH CIRCUIT**

11-20-90044



**IN RE: COMPLAINT OF JUDICIAL
MISCONDUCT OR DISABILITY**

ON PETITION FOR REVIEW*


Before: WILSON, MARTIN, JORDÁN, ROSENBAUM, JILL PRYOR, NEWSOM, BRANCH, GRANT, and LUCK, Circuit Judges; MERRYDAY, MOORE, THRASH, COOGLER, DuBOSE, HALL, TREADWELL, WALKER, and MARKS, Chief District Judges.

Upon consideration of the petitioner's complaint by a review panel consisting of Judges Wilson, Martin, Branch, Coogler, and Walker, the order of Chief Judge William H. Pryor Jr., filed on 12 August 2020, and of the petition for review filed by the complainant on 24 August 2020, with no non-disqualified judge on the Judicial Council Review Panel having requested that this matter be placed on the agenda of a meeting of the Judicial Council,

The Judicial Council Review Panel hereby determines that the disposition of this matter was proper and said disposition is hereby **AFFIRMED**.

The foregoing actions are **APPROVED**.

FOR THE JUDICIAL COUNCIL:


United States Circuit Judge

* Chief Circuit Judge William H. Pryor Jr. did not take part in the review of this petition.

FILED
U.S. COURT OF APPEALS
ELEVENTH CIRCUIT

AUG 12 2020

David J. Smith
Clerk

CONFIDENTIAL

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

Judicial Complaint No. 11-20-90044

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”).

As an initial matter, after Complainant filed his Complaint, he filed a supplemental statement. The filing of the supplemental statement is permitted. See 11th Cir. JCDR 6.7.

Background

The record shows that in May 2015 Complainant filed a request to file an involuntary bankruptcy petition against multiple individuals and entities, and the matter was docketed as a miscellaneous proceeding. In July 2015 a bankruptcy judge who is not the Subject Judge issued an opinion finding the case was subject to dismissal due to Complainant’s failure to pay the filing fee and abuse of the bankruptcy process. The judge also ordered the record sealed as the presence of an involuntary bankruptcy petition on the public record had the likelihood of adverse financial consequences on the named alleged debtors. On the same day, the bankruptcy judge entered an order striking the involuntary petition as void ab initio and dismissing the case with prejudice.

Complainant appealed to the district court, and in September 2015 a district judge entered an order affirming the bankruptcy court’s dismissal order. In December 2015 the bankruptcy judge issued an order closing the miscellaneous proceeding and stating that no further filings would be accepted unless accompanied by the filing fee.

In March 2020 Complainant filed a motion to reopen the case and paid the filing fee, and the case was reassigned to the Subject Judge. The next month, multiple individuals filed a response to the motion to reopen, and Complainant filed objections to the response. The Subject Judge then issued an order regarding issues to be considered at a hearing to be held on May 13, 2020. After that, two individuals filed a motion to quash subpoenas and others filed an objection to Complainant's discovery requests. On May 1, 2020, the Subject Judge entered an order sustaining the objection to Complainant's discovery requests. That same month, Complainant filed a motion to recuse the Subject Judge, which the Subject Judge denied.

On May 15, 2020, following a hearing, the Subject Judge issued an opinion stating that Complainant argued in his motion to reopen that: (1) he never received a copy of the December 2015 order closing the case; and (2) a fraud had been committed on the bankruptcy court. The Subject Judge noted that her April 2020 order on issues to be considered at the hearing clarified that the hearing would not be an evidentiary hearing and would be limited to providing Complainant an opportunity to cite specific facts in support of his theory that the dismissal order was obtained by fraud on the court.

The Subject Judge then generally found that: (1) Complainant did not establish that the proceeding should be reopened due to fraud on the court; (2) his filings in the case were abusive and made for inappropriate purposes; and (3) the December 2015 closing order was properly served. Finally, the order stated that the court would review any further documents submitted by Complainant and would return them to him if they did not pertain to an appeal of any order entered after the motion to reopen was filed. The same day, the Subject Judge entered an order denying the motion to reopen and denying all pending matters as moot. Complainant then filed, among other things, a notice of appeal, and in July 2020 the district court dismissed the appeal and affirmed the bankruptcy court's orders.

Complaint

In his Complaint of Judicial Misconduct or Disability, Complainant alleges the Subject Judge has a conflict of interest, is biased and prejudiced against him, and did not give him a sufficient opportunity to present evidence and to receive judicial findings on his evidence of fraud on the court. Complainant takes issue with a statement in the Subject Judge's May 1, 2020 order that the upcoming hearing was not an evidentiary hearing and subpoenas were not appropriate, contending the order showed favoritism to certain respondents. Complainant also alleges the Subject Judge acted as an attorney for Complainant's witness and obstructed Complainant's access to the judiciary, and he takes issue with a statement that his subpoena on another individual was premature and would be quashed, contending the statement "essentially concludes" that the Subject Judge is part of a conspiracy to commit fraud on the court.

Next, Complainant alleges the Subject Judge “made intentional errors of omission and misstatement” by stating that a subpoena was signed only by Complainant, when it has also been signed by a notary public. Complainant alleges the Subject Judge should recuse herself because she: (1) violated her duty to be fair; (2) failed to avoid nepotism and favoritism; (3) failed to minimize the risk of a conflict of interest “by her free counseling” for a witness; (4) relied upon attorneys’ knowledge “acquired outside the fraud upon the court action”; and (5) displayed a “deep-seated favoritism and unequivocal antagonism” to witnesses that made fair judgment impossible. He attached various documents to his Complaint.

Supplement

In his supplemental statement, Complainant states the Subject Judge’s May 15, 2020 opinion had “subsequent res judicata and collateral estoppel effect,” which barred him from property subject to the court’s jurisdiction “in connection with the writ of attachment – common law lien.” He also states the Subject Judge “had no right to proceed on the hearing on May 13, 2020” because an attorney did not have “clean hands.” Finally, Complainant appears to contend that the bankruptcy court was barred from taking certain action because of decisions made in a state court proceeding. He attached various documents to the supplement.

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, orders, and opinions 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 that Complainant challenges, he provides no credible facts or evidence in support of his claims that the Subject Judge had a conflict

