

CONFIDENTIAL

FILED
U.S. COURT OF APPEALS
ELEVENTH CIRCUIT

AUG 06 2021

BEFORE THE CHIEF JUDGE
OF THE ELEVENTH JUDICIAL CIRCUIT

David J. Smith
Clerk

Judicial Complaint No. 11-21-90058

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 2020 an individual filed a voluntary petition for Chapter 13 bankruptcy listing “_____” as a creditor with a claim secured by a vehicle. After various proceedings, in February 2021 the debtor filed a motion to compel turnover of the vehicle, contending that Complainant, as the owner of _____, had repossessed it in violation of the automatic stay. The next month, the Subject Judge issued an order granting the motion and directing _____ to immediately turn over the vehicle to the debtor, noting that a failure to do so could result in potential incarceration of any person responsible.

Later that month, the debtor filed a motion for an order to show cause why _____ should not be held in contempt of the court’s order and for other relief. The debtor also filed a motion for a hearing, and the Subject Judge issued an order granting the motion for a hearing and scheduling an emergency telephone hearing on the motion for an order to show cause. In late March 2021 the Subject Judge issued an order: (1) noting that neither _____ nor Complainant appeared at the telephone hearing; (2) scheduling an in-person hearing for April 2021; and (3) directing the United States Marshals Service to take Complainant into custody and to cause him to appear at the hearing.

On the day of the hearing, the Subject Judge issued an order immediately releasing Complainant from custody to facilitate his turnover of the vehicle to the debtor. In May 2021 the Subject Judge entered an order awarding the debtor monetary damages based on _____ and Complainant's violation of the automatic stay. In a footnote, the Subject Judge stated that he did not find credible Complainant's earlier statement at the hearing that he did not receive service of any pleadings or orders regarding the vehicle.

Complaint

In his Complaint of Judicial Misconduct or Disability, Complainant contends that he was arrested without being properly served with the appropriate paperwork. He states he believes the Subject Judge and an attorney "who placed the order to have [him] arrested should be reprimanded based on" state statutory provisions on false imprisonment and service of process. He also asserts a statutory provision on certified mail "is proof that [his] civil rights have been violated." He attached documents to his Complaint. In one document, Complainant states the Subject Judge knew he was "not served properly and still ordered a warrant for [his] arrest."

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 above-described 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 caused him to be falsely imprisoned, acted with an illicit or improper motive, 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**.

/s/ William H. Pryor Jr.

Chief Judge