

FILED
ELEVENTH CIRCUIT
JUDICIAL COUNCIL

NOV 16 2021

CIRCUIT EXECUTIVE

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

11-21-90068

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

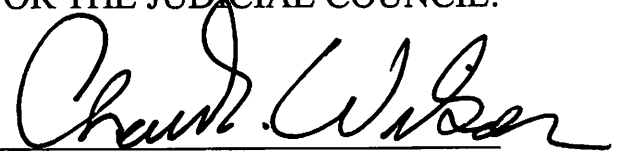
ON PETITION FOR REVIEW

Before: WILSON, ROSENBAUM, and BRANCH, Circuit Judges;
COOGLER and WALKER, Chief District Judges.

Pursuant to 11th Cir. JCDR 18.3, this Judicial Council Review Panel has considered petitioner's complaint filed on July 7, 2021, the order of Chief United States Circuit Judge William H. Pryor Jr. filed on September 14, 2021, and the petition for review filed by petitioner on September 23, 2021. No judge on this panel has requested that this matter be placed on the agenda of a meeting of the Judicial Council.

The Judicial Council Review Panel hereby AFFIRMS the disposition of this matter by Chief Judge Pryor. The petition for review is DENIED.

FOR THE JUDICIAL COUNCIL:



United States Circuit Judge

FILED
U.S. COURT OF APPEALS
ELEVENTH CIRCUIT

SEP 14 2021

David J. Smith
Clerk

CONFIDENTIAL

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

Judicial Complaint No. 11-21-90068

IN THE MATTER OF A COMPLAINT FILED BY _____

IN RE: The Complaint of _____ against United States Bankruptcy Judge _____ of the United States District 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 _____ filed a voluntary petition for Chapter 13 bankruptcy. In August 2019 Complainant filed an amended adversary complaint against the debtor, _____ (“_____”), and _____ (“_____”). He alleged the defendants were part of a criminal enterprise, argued they “destroyed the peace and quiet enjoyment” of his home in an effort to conceal illegal activities by _____ and _____, and sought in part to have a proof of claim filed by _____ declared null and void.

Also in August 2019, Complainant filed a motion for stay or injunction in which he argued that _____ and _____ proof of claim was null and void, and a week later, he filed a supplemental motion for stay or injunction. After that, he filed, among other things, requests for entry of default and motions for a default judgment against _____ and _____, and the clerk entered defaults against _____ and _____.

In October 2019 the Subject Judge entered an order vacating the entry of default against _____ and denying Complainant’s motion for a default judgment against _____, finding he did not properly serve process on _____. The Subject Judge entered a separate order denying Complainant’s motion for a default judgment against _____ and other motions he had filed because his complaint was not for a sum

certain. The Subject Judge also entered an order holding Complainant's motion for stay or injunction, as supplemented, in abeyance pending service on _____. Complainant filed a motion for reconsideration, which the Subject Judge denied.

After additional proceedings, Complainant filed a second amended complaint against _____ and _____, and the defendants filed a motion to dismiss the complaint and to set aside the entry of default against _____. In April 2020 the Subject Judge issued an order that, among other things: (1) granted _____ motion to set aside default, finding it had established good cause to do so; (2) finding Complainant failed to serve his second amended complaint on _____; and (3) abstaining from the adversary proceeding pursuant to 28 U.S.C. § 1334(c)(1) after finding that various factors weighed in favor of abstention.

After that, Complainant filed a "Motion for Judgment," a motion to alter or amend the judgment, a "Rule 60 Motion," and a motion to recuse the Subject Judge, all of which the Subject Judge denied. He also filed a notice of appeal, and in November 2020 the district court issued an order affirming the Subject Judge's order abstaining from the adversary proceeding. Complainant appealed to this Court, and in July 2021 this Court issued an order dismissing the appeal for lack of jurisdiction to the extent Complainant challenged the Subject Judge's decision to abstain and carrying with the case the other issues Complainant raised on appeal.

Complaint

In his Complaint of Judicial Misconduct or Disability, Complainant alleges that the Subject Judge engaged in an improper *ex parte* communication by sending an email on September 13, 2019, to the attorney for _____ and _____. He states the email informed the attorney: (1) of Complainant's request for an emergency hearing on his motion for an injunction; (2) that the attorney needed to file a reply; and (3) that the Subject Judge would give the attorney additional time to file a reply even though default had been entered by the clerk. He states, but for the attorney's "incompetent reply" to the email, he never would have discovered why the Subject Judge refused to hear his emergency motion for an injunction.

Complainant states the *ex parte* communication reflected the Subject Judge's "deference to litigate on behalf of Defendants." He then asserts that the clerk was directed not to accept Complainant's request for entry of default and that, after he threatened to file a mandamus petition, his motion for a default judgment was deliberately filed before his request for the clerk to enter a default. He contends the Subject Judge disregarded the law, harmed him, and "corrupted the court."

Next, Complainant alleges the Subject Judge: (1) "litigated the case" for the defendants' attorney; (2) disregarded that the defendants' motions were improperly filed;

(3) forced him to serve his proposed second amended complaint on _____ and _____; (4) held that _____ and _____ had a defense to his complaint but did not “place in the record what the defense is”; (5) “refused to rule on the Core Issue of Bankruptcy”; (6) refused to address his superior interest in the debtor’s estate, _____ and _____ lack of standing, and that a different entity was the true party in interest; (7) abstained from the proceedings to prevent this Court from reviewing the case; and (8) was civilly and criminally negligent. Complainant asserts the actions of the Subject Judge and a clerk was *prima facie* evidence that bribes made by _____ “may have reached this Court.” He also states his daughter and grandson would be alive but for the incompetent and corrupt actions of judges, and he takes issue with the actions of entities and individuals other than the Subject Judge.

Complainant attached documents to his Complaint. One attachment is an undated email from the Subject Judge’s courtroom deputy to an attorney for _____ and _____ stating that: (1) Complainant had contacted chambers requesting an emergency hearing on his motion for stay or injunction and his motion for a declaratory judgment; (2) although no response had been filed, given the attorney’s attendance at prior hearing, the courtroom deputy requested his availability over the next several weeks; and (3) if the attorney was not the correct person to contact, the email should be forwarded to the appropriate individual.

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.

