

CONFIDENTIAL

BEFORE THE CHIEF JUDGE
OF THE ELEVENTH JUDICIAL CIRCUIT

Judicial Complaint No. 11-21-90074

FILED
U.S. COURT OF APPEALS
ELEVENTH CIRCUIT

SEP 15 2021

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 October 2019 two individuals filed a voluntary petition for Chapter 7 bankruptcy and a document showing that Complainant and others were creditors. In January 2020 the Subject Judge issued an order granting a discharge to the debtors, and the order listed as examples of debts that are not discharged “some debts which the debtors did not properly list.” The next month, the case was closed.

In April 2021 Complainant filed a motion for clarification, contending debts from three court cases had not been discharged because they had not been listed in the bankruptcy case. Also in April 2021, the Subject Judge entered an order granting the motion for clarification, clarifying that the debts resulting from the three court cases had been discharged pursuant to the January 2020 order, and finding that Complainant did not establish a basis for nondischargeability of the debts under § 523 of the bankruptcy code. In May 2021 Complainant filed a motion to vacate the order, which the Subject Judge denied.

Complaint

In his Complaint of Judicial Misconduct or Disability, Complainant states the Subject Judge “willfully discharged” the debts from the three court cases despite lacking authority to do so because the debtors had not listed them in the case and failed provide

an explanation for not listing them. Complainant contends there was a conflict between the January 2020 discharge order and the April 2021 order pertaining to whether improperly listed debts would be discharged. He asserts the Subject Judge should have vacated the discharge order “because there is no statutory basis for the creditor to challenge the dischargeability of the debtors’ unlisted debts.”

Next, Complainant states the Subject Judge was made aware that the debtors engaged in fraud by listing an incorrect amount of a debt and that the Subject Judge concealed the fraud, falsified and fabricated evidence, and “conducted ultra vires activity” by denying Complainant’s May 2021 motion to vacate. Complainant also alleges the Subject Judge ignored state court orders and a state rule of civil procedure, and he states the Subject Judge “does not follow statutory law.” 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 above-described 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 concealed fraud, falsified or fabricated evidence, 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