

CONFIDENTIAL

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

Judicial Complaint No. 11-21-90106

**FILED
U.S. COURT OF APPEALS
ELEVENTH CIRCUIT**

NOV 10 2021

**David J. Smith
Clerk**

IN THE MATTER OF A COMPLAINT FILED BY _____

IN RE: The Complaint of _____ against United States District 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 District 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 2015 Complainant, through his attorney _____, filed a voluntary petition for Chapter 7 bankruptcy, and a bankruptcy judge who is not the Subject Judge granted Complainant a discharge in January 2016. In February 2017 Complainant filed a motion to reopen the case to add an omitted creditor, alleging a creditor “perjured itself in a false bad check affidavit signed by _____ in a false attempt to create personal liability against the Debtor,” and that “the bad check claim is fabricated on a perjured bad check affidavit.” The bankruptcy judge entered an order reopening the case.

After additional filings, the bankruptcy case was closed in June 2017. In May 2018 Complainant filed another motion to reopen the case to consider motions for contempt and sanctions against the creditor, _____, and another individual (collectively “the Creditors”), and the Subject Judge later granted the motion to reopen. Complainant filed a motion for contempt and multiple motions for sanctions, generally arguing the Creditors violated the automatic stay under 11 U.S.C. § 362 and the discharge injunction under 11 U.S.C. § 524 by participating in the state court criminal matter where Complainant was charged with issuing a “bad check.” In August 2018 _____ moved to withdraw as Complainant’s attorney, and the Subject Judge later granted the motion.

Also in August 2018, the Creditors and their attorneys filed a motion for sanctions against Complainant and _____.

Following a hearing, in May 2019 the Subject Judge issued an opinion and order denying Complainant's motions for contempt and sanctions and granting the Creditors' motion for sanctions, finding the Creditors and their counsel were entitled to attorneys' fees and costs to be paid by _____. In setting out the background, the Subject Judge stated that in January 2016 Complainant was arrested and charged with uttering a worthless check, _____ responded to inquiries from the Sheriff's office as part of its investigation, and the state ultimately entered an order of *nolle prosequi*. The Subject Judge, citing the Creditors' exhibits, stated that in December 2016 _____ spoke with _____ twice and faxed him copies of a demand letter originally sent to Complainant in August 2015.

The Subject Judge then discussed the criminal-proceeding exception to the automatic stay and the case *Barnette v. Evans*, 673 F.2d 1250 (11th Cir. 1982), noting the litigant in that case was indicted for theft by deception during his bankruptcy case. The Subject Judge held there was no violation of the automatic stay as a result of the prosecution of the state criminal case or the Creditors' participation in that prosecution and that the alleged violations of the discharge injunction were baseless.

In finding that sanctions were warranted against _____, the Subject Judge stated, among other things, that he: (1) failed to provide the court with properly researched pleadings; (2) demonstrated instances of "professional incivility"; and (3) repeatedly filed "largely incomprehensible pleadings replete with typographical errors," which indicated an "outrageous lack of care." The Subject Judge also stated that Complainant "steadfastly remains unwilling (or perhaps unable) to see that his arrest occurred as a foreseeable consequence of his own conduct in tendering a bad check." Complainant appealed the order. In July 2019 the Subject Judge issued an order directing _____ to pay the Creditors and its attorneys a certain amount in attorneys' fees and costs.

In September 2020 the district court issued an order affirming the Subject Judge's May 2019 opinion and order. Complainant then appealed to this Court, and this Court clerically dismissed the appeal pursuant to the parties' motion for voluntary dismissal. The bankruptcy case was closed in January 2021.

Complaint

In his Complaint of Judicial Misconduct or Disability, Complainant first alleges the Subject Judge denied him "the protection afforded under Bankruptcy Law." He asserts the Subject Judge "falsified facts" by stating that in December 2016 _____

spoke with _____ twice and faxed him copies of a demand letter, when the record showed that those events occurred in December 2015. Complainant asserts the Subject Judge made an “extrajudicial determination” that he was “still undergoing a criminal process” for violating a state statute, when the record was silent on the matter. He contends the Subject Judge “[a]ligned” him with the “bad actor” who was indicted for theft by deception in the *Barnette* case, when nothing in the record indicated that Complainant engaged in any such unlawful act and there was no order of restitution against him. He also asserts the Subject Judge made an extrajudicial determination without due process that he had tendered a bad check, when that was not supported by the record.

Next, Complainant alleges the Subject Judge “[u]sed language in the judicial context that demonstrated pervasive bias towards the Complainant and his lawyer” and made public through the order a bar complaint against his attorney. Complainant states the correctness of the Subject Judge’s ruling is not at issue, “only that the [Subject] Judge made factually groundless allegations, lacking cognizable evidentiary support, to malign the Complainant and his lawyer in the public domain.” He states, “Nothing in the record reveals the Complainant or his lawyer engaged in any unlawful act(s).” Finally, he states the Subject Judge’s actions caused him to be exposed to sanctions and to lose his lawyer and had a “prejudicial effect on the administration of the business of the courts, including a substantial and widespread lowering of public confidence in the courts among reasonable people.”

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 bankruptcy

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 falsified facts, was biased against him or his attorney, 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