

AUG. 04 2023

David J. Smith
Clerk

CONFIDENTIAL

Before the Chief Judge of the
Eleventh Judicial Circuit

Judicial Complaint No. 11-23-90089

ORDER

An individual has filed a Complaint against a United States bankruptcy judge under the Judicial Conduct and Disability Act of 1980, 28 U.S.C. §§ 351–364, and the Rules for Judicial-Conduct and Judicial-Disability Proceedings of the Judicial Conference of the United States.

Background

The record shows that in 2019 a corporation filed a voluntary petition for Chapter 11 bankruptcy. The Subject Judge later converted the case to a Chapter 7 case and appointed a Chapter 7 Trustee. The Trustee then filed an adversary complaint and amended adversary complaints against the debtor and other entities, including multiple trusts, seeking to recover alleged fraudulent transfers the debtor made to those entities. Multiple attorneys entered notices of appearance on behalf of the defendants.

After various proceedings, the Trustee and “all Defendants, by their undersigned counsel,” filed a Stipulation for Final Judgment determining that certain real properties were property of the bankruptcy estate. The Stipulation contained electronic signatures by the Trustee’s attorney and an attorney for the defendants, and the Trustee’s attorney attested pursuant to a local rule that “concurrency in the filing of this paper has been obtained.” The Subject Judge then entered an order approving the Stipulation and entered a final judgment in favor of the Trustee and against the defendants determining the real properties were part of the bankruptcy estate. The adversary proceeding was closed.

Months later, Complainant, stating he was the trustee for the defendants, filed an affidavit in which he stated that a settlement agreement filed in the case had not been agreed to or signed by counsel for the defendants. The defendants, through a new attorney, then filed a motion to vacate the Stipulation, the order approving the Stipulation, and the final judgment, alleging in part that the filings were void because the defendants never consented to or agreed to the filings, the Stipulation “with typed signatures for only the two attorneys” was a fraud on the court, and the defendant’s attorney did not have the authority to sign the Stipulation. The adversary proceeding was then reopened, and there continues to be activity in the proceeding.

Meanwhile, in the main bankruptcy case, the Trustee filed a motion for, among other things, an order approving a compromise with debtor-related parties and approving the sale of real property.

The motion stated that the Trustee had entered into a settlement agreement with the defendants in the adversary proceeding that required the defendants to execute and file a stipulation that certain properties were property of the bankruptcy estate. A settlement agreement, apparently signed only by the Trustee, was attached to the motion. The Subject Judge entered an order granting the Trustee's motion. There continues to be activity in the case.

Complaint

Complainant alleges the Subject Judge "had no jurisdiction in" the above-described adversary proceeding and "engaged in prejudicial and biased behavior." He alleges that the Subject Judge stated at a hearing that Complainant did not have standing and had no interest in the matters being litigated, but that the Subject Judge issued an order where he was "named personally," which was in "direct contravention" of the earlier statement. He states, "How can this be with no jurisdiction? To me, this is an infringement of my liberties without due process. It is clear to me that this is prejudicial and biased."

Complainant then states that the Trustee filed a motion for compromise in the main bankruptcy case that required a settlement agreement and stipulation signed by the defendants, and that the Trustee filed an unsigned settlement agreement and a stipulation "signed electronically by two attorneys who did not represent all of the parties involved." He contends that the defendants' attorney whose signature appeared on the Stipulation stated at a hearing that he did not authorize his signature on the Stipulation "to be

used electronically,” and that the Trustee’s attorney “signed the Stipulation alone.” Complainant states that three affidavits and an attorney’s statement at a hearing establish “that there was no Settlement Agreement and no signed Stipulation by the Defendants, which was required by the Motion. And no evidence has been filed to the contrary. Without these two required documents, [the Subject Judge] had no jurisdiction.”

Complainant states the Subject Judge’s statement a hearing—that the “Trustee has to do with it what the motion for approval of the compromise says”—shows that the Subject Judge “was fully aware of what was needed to give her jurisdiction.” He states the Subject Judge “knew the Motion included an unsigned Settlement Agreement and a Stipulation not signed by the Defendants which was a requirement of the Motion,” the Subject Judge “did not have jurisdiction,” and “therefore any Order is void at inception.” Complainant asserts the Subject Judge’s “prejudicial bias is self-evident.” He states the Subject Judge never asked the Trustee or the Trustee’s counsel about the validity of the contested documents, “clearly protecting them,” and that the Subject Judge “made sure nobody asked the Trustee or his counsel questions.” He states, “This is clear bias in that [the Subject Judge] is protecting them from incriminating or perjuring themselves. [The Subject Judge] has become an advocate for the Trustee and his counsel.”

Complainant attached documents to his Complaint, including an affidavit from an attorney who stated that he alone represented the defendants in the adversary proceeding, and that he did

not agree to the Stipulation. Complainant also attached an affidavit from another individual stating the Stipulation was a fraud on the court, as well as his own affidavit in which he stated the Stipulation was not authorized.

Discussion

Judicial-Conduct Rule 4(b)(1) 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 explains the rationale for this rule as follows:

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.

The Complaint fails to present a basis for a finding of misconduct. To the extent Complainant’s allegations concern the substance of the Subject Judge’s official actions, rulings, findings, and orders in the above-described cases, the allegations are directly related to the merits of the Subject Judge’s decisions or procedural rulings. Judicial-Conduct Rule 11(c)(1)(B). Complainant’s

remaining claims are based on allegations lacking sufficient evidence to raise an inference that the Subject Judge acted with an illicit or improper motive, was biased or otherwise not impartial, acted to protect or advocated for individuals or parties, or otherwise engaged in misconduct. Judicial-Conduct Rule 11(c)(1)(D). For these reasons, this Complaint is **DISMISSED**.

/s/ William H. Pryor Jr.
Chief Judge