

JUL 10 2024

David J. Smith
Clerk

CONFIDENTIAL

Before the Chief Judge of the
Eleventh Judicial Circuit

Judicial Complaint No. 11-24-90129

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 a corporation filed a voluntary petition for Chapter 11 bankruptcy, which the Subject Judge later converted to a Chapter 7 case. Complainant and other entities later filed an adversary complaint against several defendants pertaining to events in the bankruptcy case, and they later filed amended complaints. The attorney for the debtor in the bankruptcy case appeared at hearings in the adversary proceeding. After a hearing, the Subject Judge entered an “Order Granting *Ore Tenus* Motion for Comfort Order” The order stated that, during a hearing on

other matters, the debtor's attorney moved for authority to disclose conversations he and his law firm had with the debtor and Complainant, whom the order collectively referred to as "Debtor Parties." The Subject Judge granted the motion after hearing argument. The order authorized the attorney and his firm to disclose all communications with the debtor and Complainant. Complainant filed a motion to reconsider, which remains pending.

Complaint

Complainant takes issue with the comfort order that the Subject Judge issued in the adversary proceeding. He alleges that the debtor's attorney previously was his attorney and that he filed a bar complaint against the attorney, that the comfort order was issued to help the attorney in the disciplinary matter, and that his bar complaint was dismissed immediately after the State Bar received the order. Complainant asserts the order "was based on a phantom Ore Tenus Motion from an attorney that represented no one in the case," was "inappropriate and biased on many levels," and falsely stated he was a debtor. He alleges the Subject Judge backdated the order 13 months, violated his constitutional rights by issuing the order without giving him notice or an opportunity to be heard, and acted without authority in allowing the attorney to violate the attorney-client privilege.

Complainant alleges the Subject Judge issued the comfort order because she was biased in favor of the attorney. He states, "How could [the Subject Judge] not be compromised by her socializing with attorney [] on his boat on more than one occasion?" He

also states, “Displayed prominently in [the attorney’s] waiting room is a picture of [the attorney] and [the Subject Judge] together. [The attorney] uses this photograph to promote the favorable treatment he gets when he is in [the Subject Judge’s] courtroom. How can a judge be impartial when she is actively socializing with lawyers that appear in her courtroom?” He also states, “I have no confidence in the impartiality in [the Subject Judge’s] courtroom because of her conduct.”

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 order granting the motion for a comfort order, 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 was biased or otherwise not impartial, used her office to obtain special treatment for friends, or otherwise engaged in misconduct. Judicial-Conduct Rule 11(c)(1)(D). *See* Canon 4 of the Code of Conduct for United States Judges (noting that a judge may engage in extrajudicial social activities); *Guide to Judiciary Policy*, Vol. 2B, Ch. 2, Advisory Opinion No. 11 (noting that a judge need not automatically recuse when a long-time friend is an attorney in the case). For these reasons, this Complaint is **DISMISSED**.

/s/ William H. Pryor Jr.
Chief Judge