

JUDICIAL COUNCIL
OF THE FIRST CIRCUIT

IN RE
COMPLAINT NO. 01-11-90029

BEFORE
Lynch, Chief Circuit Judge

ORDER

ENTERED: OCTOBER 13, 2011

Complainant, a pro se litigant, has filed a complaint, under 28 U.S.C. § 351(a), alleging that a bankruptcy judge engaged in misconduct while presiding over the complainant's original petition and related adversary proceeding. The complainant alleges that the judge is biased against complainant because complainant is pro se.

Complainant contends that the judge has not allowed complainant to respond to motions filed against him. Complainant references a motion that the U.S. Trustee¹ filed against complainant in the adversary proceeding, and asserts that the judge granted it within two hours and "without any notification to [complainant] at all."

Complainant further avers that the judge's bias "has become even more

¹Complainant apparently misidentifies the U.S. Trustee as the U.S. Attorney.

predominant," since the complainant filed a motion to recuse the judge and told the judge that complainant intended to file this complaint and a federal court action against the judge. The complainant adds that, five minutes after complainant said in court that he intended to file a misconduct complaint, the judge stated that it had been denied, even though complainant had yet to file it.

Finally, complainant alleges that the judge has "purposely decreased the assets" in complainant's estate, and has improperly addressed complainant in a "demeaning" and "joking" manner, thus violating complainant's rights.

The complaint is baseless. The reviewed record - consisting of the misconduct complaint, as well as the docket(s), pleadings, and court orders in both of complainant's cases - offers no evidence of judicial bias. In deference to complainant, the judge vacated the first default judgment entered against complainant in the adversarial proceeding. After complainant failed to appear at a rescheduled hearing, the judge subsequently denied the complainant's discharge. After complainant twice filed and then withdrew a motion seeking the judge's recusal in the original case, the judge denied complainant's third motion to recuse. As the reviewed materials contain no information suggesting that the judge has exhibited bias against the complainant - either before or after complainant sought the judge's recusal - the complaint is dismissed, pursuant to 28 U.S.C. § 352(b)(1)(A)(iii). See also Rules for Judicial-Conduct and Judicial-Disability Proceedings (Rules of Judicial-Conduct), Rule 11(c)(1)(C).

The claim that the judge told complainant that an unfiled misconduct complaint

had already been denied is also presented without any basis in fact. The complainant also proffers no evidence that the judge's demeanor was disrespectful of complainant. See 28 U.S.C. § 352(b)(1)(A)(iii). See also Rules for Judicial-Conduct, Rule 11(c)(1)(C). Moreover, the tone maintained by a judge is not indicative of misconduct. See 28 U.S.C. § 352(b)(1)(A)(i), and Rules for Judicial-Conduct, Rule 11(c)(1)(A). See also Boudin, C.C.J., Order, In Re: Complaint No. 444, January 23, 2007, at 4.

With respect to complainant's claim that he was denied the opportunity to respond to motions, the record indicates that, in the original proceeding, the court routinely ruled on motions only after hearing from both parties. In the adversary case, the court did on occasion rule on motions filed by the trustee shortly after they were filed and in the absence of an opposition. This is not misconduct. A court's ruling on a pending motion in the absence of an opposition is not inherently improper - either legally or ethically. See Boudin, C.C.J., Amended Order, In Re: Complaint No. 406, September 9, 2005, at 2-3. The judge's conduct in this regard was not inappropriate or otherwise reflective of wrongdoing. See 28 U.S.C. § 352(b)(1)(A)(i). See also Rules for Judicial-Conduct, Rule 11(c)(1)(A). To the extent that complainant is asserting a clerical error in the mailing of notices, there is both no evidence of this claim and it would not, if true, indicate judicial impropriety. See id., and Amended Order, In Re: Complaint No. 406, *supra*, at 3.

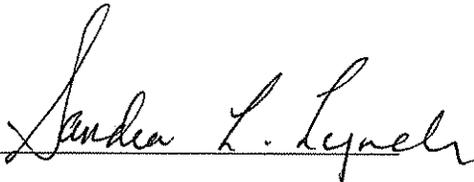
Finally, as there is no evidence of bias, the complainant's disagreement with the substance of orders issued by the court - including its denial of the complainant's motion

for recusal, its denial of discharge, and any rulings that impacted the value of complainant's assets - does not constitute a cognizable basis for a misconduct complaint. See 28 U.S.C. § 352(b)(1)(A)(ii). See also Rules for Judicial-Conduct, Rule 11(c)(1)(B), and Rule 3(h)(3)(A) ("An allegation that calls into question the correctness of a judge's ruling, including a failure to recuse, without more is merits-related.").

For the reasons stated, Complaint No. 01-11-90029 is dismissed, pursuant to 28 U.S.C. §§ 352(b)(1)(A)(i), 352(b)(1)(A)(ii), and 352(b)(1)(A)(iii). See also Rules of Judicial-Conduct, Rules 11(c)(1)(A), 11(c)(1)(B) and 11(c)(1)(C).

10/13/2011

Date

A handwritten signature in black ink, reading "Sandra L. Lynch", written over a horizontal line.

Chief Judge Lynch