

JUDICIAL COUNCIL
OF THE FIRST CIRCUIT

IN RE
COMPLAINT NO. 01-17-90002

BEFORE
Howard, Chief Circuit Judge

ORDER

ENTERED: MAY 15, 2017

Complainant, a pro se litigant, has filed a complaint of misconduct, under 28 U.S.C. § 351(a), against a bankruptcy judge of the First Circuit Bankruptcy Appellate Panel (BAP). Complainant alleges judicial misconduct in connection with a bankruptcy appeal over which the subject judge presides. The misconduct complaint is baseless and not cognizable.

Complainant asserts that the judge committed misconduct by issuing an order denying complainant's motion to dismiss without addressing the substance of the motion. Complainant further asserts that the judge was insulting to complainant in the order, is running a "scam" of some kind, and is not taking the case seriously. Complainant also alleges that, as a pro se litigant, she lacks remote access to PACER, the court's electronic filing system.

A review of the record of the case provides no factual support for complainant's conclusory allegations of judicial wrongdoing or a "scam." To date, the bankruptcy judge has issued a single order in this case - denying complainant's motion to dismiss, in which complainant asserted that she had not been served timely with notice of the appeal. The judge denied the motion because the record demonstrated that the complainant had notice of the appeal. Furthermore, while a judge is not legally or ethically obligated to address the substance of every claim when ruling on a motion, the judge, in fact, responded directly to complainant's arguments and directed the other party to demonstrate compliance with the governing rules.

Nor does the order denying complainant's motion contain "insulting" or otherwise improper language. See Rules for Judicial-Conduct and Judicial-Disability Proceedings (Rules of Judicial-Conduct), Rule 3(h)(1)(D) ("Cognizable misconduct . . . includes . . . treating litigants or attorneys in a demonstrably egregious and hostile manner . . ."). In denying the motion to dismiss, the judge did not use hostile, let alone egregious, language; the order objectively addresses the arguments raised by complainant and explains the judge's legal bases for rejecting them. The order at issue in this proceeding "do[es] not even approach 'the sort of deep-seated unequivocal antagonism that may constitute misconduct.'" See Lynch, C.C.J., Order, In re Judicial Misconduct Complaint No. 01-12-90015, July 11, 2012, at 6, quoting In Re: Jane Doe, 640 F.3d 861, 863 (Judicial Council of the Eighth Circuit, February 4, 2011). As there is no evidence of any

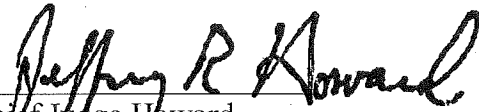
judicial impropriety, the misconduct complaint is dismissed as baseless, pursuant to 28 U.S.C. § 352(b)(1)(A)(iii). See also Rules of Judicial-Conduct, Rule 11(c)(1)(D).

Absent evidence of improper judicial motive, complainant's objection to the judge's order denying the motion to dismiss does not constitute judicial misconduct. See Rules of Judicial-Conduct, Rule 3(h)(3)(A) ("Cognizable misconduct . . . does not include . . . an allegation that is directly related to the merits of a decision or procedural ruling. An allegation that calls into question the correctness of a judge's ruling, including a failure to recuse, without more, is merits-related."). Accordingly, the misconduct complaint is dismissed as not cognizable, pursuant to 28 U.S.C. § 352(b)(1)(A)(ii). See also Rules of Judicial-Conduct, Rule 11(c)(1)(B).

Finally, by local rule, the BAP limits access to electronic filing, including remote access to PACER, to represented parties. See BAP General Order No. 2 (Order Regarding Case Management/Electronic Case Files System), Rule 1(a)(1). On the present facts, the judge's compliance with this rule is not remotely indicative of judicial misconduct. See 28 U.S.C. § 352(b)(1)(A)(i). See also Rules of Judicial-Conduct, Rule 11(c)(1)(A).

For the reasons stated, Complaint No. 01-17-90002 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, Rule 11(c)(1)(A), 11(c)(1)(B), and Rule 11(c)(1)(D), respectively.

5/15/2017
Date


Chief Judge Howard