

JUDICIAL COUNCIL
OF THE FIRST CIRCUIT

IN RE
COMPLAINT NO. 01-18-90011

BEFORE
Howard, Chief Circuit Judge

ORDER

ENTERED: DECEMBER 18, 2018

Complainant, a pro se debtor, has filed a complaint of misconduct, under 28 U.S.C. § 351(a), against a bankruptcy judge in the First Circuit in connection with complainant's bankruptcy case over which the judge presided.¹ The misconduct complaint is baseless and is not cognizable.

Complainant lodges numerous diffuse allegations against the bankruptcy judge, who presided over complainant's and his spouse's voluntary chapter 7 case. Complainant primarily alleges that, in exchange for money, the judge conspired with a municipal creditor in complainant's bankruptcy case, its attorneys, and a local police department against complainant. Complainant alleges that, in furtherance of this conspiracy, the

¹ This is complainant's second misconduct complaint. In 2015, complainant filed a misconduct complaint alleging that a district judge engaged in judicial misconduct in presiding over complainant's civil rights case. I dismissed the misconduct complaint, pursuant to 28 U.S.C. §§ 352(b)(1)(A)(ii) and 352(b)(1)(A)(iii). See Howard, C.C.J., Order, In Re: Judicial Misconduct Complaint No. 01-15-90014, November 3, 2015.

judge engaged in wrongdoing, including, but not limited to: knowingly allowing the creditor to violate the automatic stay; providing legal advice to the creditor's attorney; engaging in ex parte communications with the creditor's attorney; denying complainant access to discovery; and repeatedly and wrongfully ruling in favor of the creditor without reading pleadings. Complainant further alleges that the bankruptcy judge conspired with the creditor and the police department to harass and to file false charges against complainant. Complainant asserts that, in light of this conspiracy, the judge should have recused from his case. Complainant also alleges that the judge treated complainant improperly during hearings.

Complainant makes numerous requests for relief, including, but not limited to: an order that the municipal creditor withdraw criminal charges against complainant; the removal of the bankruptcy judge from the court; the assignment of a new judge to complainant's case; and a criminal investigation of the judge and the creditor's attorney.

As an initial matter, the judicial misconduct procedure does not provide an avenue for obtaining any of complainant's requested relief, including the removal of a judge, the reassignment of a proceeding, an order in a case, or the opening of a criminal investigation. See 28 U.S.C. § 351, *et seq.*, and Rules for Judicial-Conduct and Judicial-Disability Proceedings (Rules of Judicial-Conduct), Rules 11, 19, and 20.

Moreover, the reviewed record—including the misconduct complaint, the docket of the proceedings, the transcripts of the relevant hearings, and the court's orders—provides no support for complainant's allegations of collusion, bias, or other

wrongdoing by the bankruptcy judge. The record indicates that, after complainant and his spouse filed a pro se voluntary chapter 7 petition, the municipal creditor filed a motion for an order exempting or relieving it from the automatic stay (Automatic Stay Motion), in order to continue adjudicating state court proceedings against complainant. The day before the hearing on the Automatic Stay Motion, complainant filed a motion to continue the hearing, which the judge denied, as well as an objection to the Automatic Stay Motion and a motion to hold the creditor in contempt for violating the automatic stay (Contempt Motion). At the conclusion of the hearing, at which both parties presented their arguments, the judge granted in part the Automatic Stay Motion, while continuing resolution of the remainder of the Automatic Stay Motion and the Contempt Motion.

Complainant filed motions to compel discovery and alleged that, in retaliation for the requested discovery, the creditor caused the police to harass him. Complainant then unsuccessfully sought to postpone the continued hearing on the Automatic Stay Motion until complainant's discovery request was granted. At the hearing, the creditor withdrew the Automatic Stay Motion, and the judge heard extensively from complainant regarding the Contempt Motion and allowed complainant to supplement the motion. The transcript demonstrates that, when complainant became agitated during the hearing, the bankruptcy judge warned complainant that the hearing may need to be concluded and took a recess.

Complainant subsequently filed pleadings for various other relief and requested an extension of time in which to supplement the Contempt Motion. The judge granted

complainant's request for additional time. Complainant then filed pleadings alleging that the judge engaged in ex parte communication with the creditor's attorney and requesting that the court compel discovery on the Contempt Motion. In response, the judge held an emergency telephone conference during which the court denied complainant's claims of ex parte communication and stated that there would be no ruling on the discovery requests until after briefing on the Contempt Motion was complete.

Shortly thereafter, the creditor withdrew its state court claims against complainant and filed a motion in the bankruptcy proceeding for sanctions or costs, alleging that complainant threatened the creditor's attorney. The bankruptcy judge ordered complainant to show cause why he should not be sanctioned (Show Cause Order). Complainant then filed a motion for recusal, claiming that the judge was biased in favor of the municipal creditor, which the judge denied. Subsequently, complainant supplemented the Contempt Motion and filed numerous motions for extensions of time and to continue hearings, many of which the court granted.

At a hearing on various pending matters, the judge gave complainant additional time to respond to the Show Cause Order and entered a discovery schedule based on the parties' agreement. After the discovery deadline passed, the municipal creditor filed a motion for default and dismissal of the Contempt Motion because complainant failed to cooperate in the discovery process, to which complainant objected. In a several page order, the judge noted that complainant failed to appear at a scheduled deposition, denied the motion to dismiss, ordered complainant to reimburse the creditor for reasonable costs

and fees and to appear at a rescheduled deposition, and scheduled a case management conference. The day of the conference, complainant filed a motion to participate by phone. Although the judge granted the request, complainant failed to appear. Over the next month, complainant filed numerous motions for recusal, all of which the court denied.

In a lengthy memorandum and order, the bankruptcy judge ultimately granted the creditor's motion to dismiss because complainant repeatedly failed to participate in the discovery process and to attend court hearings. Subsequently, the court released the Show Cause Order against complainant without ordering sanctions.

Complainant's conclusory allegations of judicial wrongdoing lack any basis in fact. Complainant provides, and the record reveals, no evidence to support the allegations that the judge colluded with, had ex parte communications with, or provided legal advice to the municipal creditor. There is, likewise, no evidence that the judge was biased in favor of the creditor. To the contrary the docket, pleadings, orders, and transcripts of the relevant hearings demonstrate that the judge consistently gave complainant ample opportunity to present and supplement his claims, issued lengthy and detailed orders that showed careful attention to complainant's arguments, and made numerous rulings that were favorable to complainant (such as granting many of complainant's motions to continue hearings and for extensions of time, denying the creditor's first motion to dismiss, and partially denying the creditor's Automatic Stay Motion).

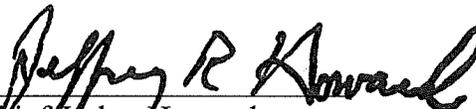
The hearing transcripts also establish that the judge consistently treated the parties with respect and did not use any disparaging, hostile, or otherwise inappropriate language. The judge advised complainant that he could be removed from the courtroom only after complainant disrupted the proceeding. "A judge must exercise reasonable discretion over his or her courtroom environment," and there is no evidence that, in managing the courtroom, the bankruptcy judge "acted for any inappropriate reason or improperly exercised his judgment." See Howard, C.C.J., Order, In Re Complaint No. 01-15-90012, October 7, 2015, at 4 (quoting Boudin, C.C.J., Order, In Re Complaint No. 429, June 12, 2006, at 4). Nor did the judge exhibit hostility or disparage complainant, let alone convey "'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)). Accordingly, the 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).

As there is no evidence of bias or judicial animus, complainant's objections to the judge's orders, including, but not limited to, allowing in part the Automatic Stay Motion, denying complainant's motions for recusal, and dismissing the Contempt Motion and the proceeding, are not cognizable. 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 complaint is dismissed pursuant to 28 U.S.C. § 352(b)(1)(A)(ii). See also Rules of Judicial-Conduct, Rule 11(c)(1)(B).

For the reasons stated, Complaint No. 01-18-90011 is dismissed, pursuant to 28 U.S.C. §§ 352(b)(1)(A)(ii) and 352(b)(1)(A)(iii). See also Rules of Judicial-Conduct, Rules 11(c)(1)(B) and 11(c)(1)(D), respectively. In addition, complainant should note that the filing of another frivolous judicial misconduct complaint may precipitate issuance of an order to show cause. See Rules of Judicial-Conduct, Rule 10.

December 18, 2018
Date


Chief Judge Howard