

JUDICIAL COUNCIL
OF THE FIRST CIRCUIT

IN RE
COMPLAINTS NOS. 01-10-90029, 01-11-90005, 01-11-90009, and 01-11-90010

BEFORE
Lynch, Chief Circuit Judge

ORDER

ENTERED: MARCH 31, 2011

The complainant is a creditor appearing pro se in what is now a Chapter 7 bankruptcy proceeding. Over the last several months, the complainant has filed four complaints alleging that the bankruptcy judge who currently presides over the proceeding has violated the Judicial Conduct and Disability Act, 28 U.S.C. § 351 (a). This judge is the third to preside over this litigation.

The misconduct complaints stem from the complainant's dissatisfaction with the court's rulings and its reasonable attempts to curtail the complainant's redundant, frivolous and voluminous filings, and violations of appropriate court orders. The reviewed record demonstrates that, since December 2009, the complainant has filed over 100 motions, responses and objections, many over 30 pages in length, and some over 100 pages. Many were repetitive and made virtually incomprehensible requests for relief.

The record further establishes that the presiding judge held multiple hearings, and issued prompt and thorough orders addressing the complainant's myriad of filings. In order to maintain an orderly courtroom environment, as well as the efficiency and the integrity of the proceeding, the judge has also taken reasonable steps to address the complainant's prolific filing and inflammatory behavior, including imposing on complainant a civil contempt order and sanctions.

The four complaints are addressed concurrently. The reviewed record - including the misconduct complaints, the docket, relevant pleadings, audio recordings of relevant hearings, and the court's orders, as well as information obtained from court staff and security personnel - demonstrates that, not only are the complaints frivolous, but the complainant's repetitious filing of baseless misconduct complaints warrants the issuance of a show cause order. Such an order is issued in conjunction with the present order of dismissal. See Rules for Judicial-Conduct and Judicial-Disability Proceedings (Rules of Judicial-Conduct), Rule 10(a).

The complaints present numerous allegations of bias, misconduct, and disability. The complainant submits a charge of delay and inefficiency with the claim of disability. With respect to the alleged bias, the complainant asserts that the judge favored the trustee, as evidenced in part by the judge's harsh tone, failure to allow all parties to be heard equally, improper ex parte communication, inattentiveness, and erroneous rulings. The claims are addressed in turn below.

Disability and Delay

The complainant contends that the judge has been agitated, improperly interrupted the complainant, and issued erroneous rulings, and that this is misconduct and evidences a disability. The complainant alleges that the cause of this is that the judge suffers from a psychiatric disorder that has interfered with the judge's ability to competently preside over the proceeding. The complainant asserts that she is bringing this complaint on behalf of multiple creditors who are afraid to charge the judge with a mood disorder.

The complainant further asserts that, in addition to issuing erroneous rulings, the judge has not expeditiously handled the case for the same reasons. The complainant references an alleged submission or pleading on a specific date to which the judge did not respond in a timely manner. The complainant continues that, when the parties appeared for a scheduled hearing, they were informed it had been cancelled.

There is no evidence of any misconduct, of any bias, or of any disability. To the contrary, the record demonstrates that the judge has ruled thoughtfully and expeditiously on the multitude of redundant and often incomprehensible pleadings the complainant has submitted. The judge has held over 10 hearings since taking over the case and ruled systematically on all pending matters.¹ The complainant's allegations have no basis in fact and are dismissed as frivolous, pursuant to 28 U.S.C. § 352(b)(1)(A)(iii). See also Rules of Judicial-Conduct, Rule 11(c)(1)(C).

¹While there is no evidence of unreasonable delay, cognizable misconduct does not include "an allegation about delay in rendering a decision or ruling" Rules for Judicial-Conduct and Judicial-Disability Proceedings (Rules of Judicial-Conduct), Rule 3(h)(3)(B).

The related claims of delay and inefficiency both fail to state a cognizable misconduct claim. The court's cancellation of a hearing or untimely response to a given pleading, had they occurred, would not alone suggest disability or misconduct. See 28 U.S.C. § 352(b)(1)(A)(i). See also Rules for Judicial-Conduct, Rule 11(c)(1)(A). But they did not occur. The court did not cancel the referenced hearing; it changed the time of the hearing several days before it was scheduled and issued appropriate notice. The docket does not reflect any pleading filed on the date specified, let alone one to which the judge failed to respond.

Bias

The complainant alleges that the judge is biased against her and the debtor, in favor of the trustee, in not appointing complainant as trustee. The complainant contends that, instead of appointing her, the judge conspired with the U.S. Trustee's Office to appoint the judge's "preferred panelist" The complainant continues that the appointed trustee and his counsel conspire with the judge to issue rulings that are not related to the merits. The complainant asserts that the judge and the trustee went to law school together, and that the judge has stated that he is the "best trustee" in the Circuit. The transcript of the § 341 hearing shows no bias.

The complainant further states that, when she rightfully challenged the appointment of the trustee, the court told the complainant that her charges were frivolous and threatened to impose sanctions if she continued to complain against the trustee. The

complainant states that the police informed her that the judge "is part of the corruption," and advised her to have no contact with the trustee who was allegedly harassing her.

The claim of judicial bias is baseless. There are no facts in the complaint or the reviewed record indicating that the judge was prejudiced against the complainant or the debtor, or otherwise lacked impartiality in connection with the proceeding. In fact, the trustee was appointed by a previous judge in the case, after a § 341 creditors' meeting at which he had been elected in accordance with 11 U.S.C. § 702(b).

With regard to the sanctions which the court imposed on the complainant, the record reflects that they were imposed not because the complainant had challenged the appointment of the trustee, as alleged, but because the complainant had "filed an incessant stream and array of voluminous motions, objections and responses, many of which [were] duplicative and frivolous . . . [and] contain[ed] defamatory allegations and incomprehensible requests for relief." The claim that the court sanctioned the complainant for challenging the appointment of the trustee is dismissed as conclusively refuted by the record pursuant to 28 U.S.C. § 352(b)(1)(B), and Rules for Judicial-Conduct, Rule 11(c)(1)(D).

There is also no evidence in support of the other allegations concerning the trustee. See 28 U.S.C. § 352(b)(1)(A)(iii), and Rules for Judicial-Conduct, Rule 11(c)(1)(C).

Tone and Opportunity to Be Heard

The complainant alleges that the judge's tone has been "harsh" toward the debtor,

but "outright abusive" toward the complainant, specifically that, the judge "lost total emotional control in the courtroom [at a hearing] and was screaming at [complainant]," and that, at another hearing, the judge allowed a convicted felon who was not a party to the case to speak for two minutes but "complained about the number and length of [complainant's] pleadings."

Review of the audio recordings of the relevant hearings demonstrate that the judge's tone was not remotely indicative of misconduct. During the first hearing, the judge clearly instructed the complainant to stop interrupting the judge. This was not misconduct. Nor was it misconduct for the judge to allow the individual who had filed a notice of appearance as an interested party to address the court.

At another cited hearing, the court instructed the complainant to limit her argument to issues that had not been the subject of previous orders. At one point, the judge politely asked the complainant to address another issue, to which the complainant responded: "If you listen and let me speak, maybe you'll learn something" The judge explained to the complainant that, as the "finder of fact," the court "needs to be able to ask questions." When the complainant refused to comply with the judge's directive to terminate her argument, the judge definitively instructed the complainant to "sit down."

At the third cited hearing, the judge heard from complainant in full before allowing the trustee's motion to hold the complainant in contempt for violating a previous court order (requiring the complainant to refrain from filing frivolous pleadings and to submit the requisite filing fees). The court ordered the clerk not to accept the

complainant's filings until the complainant complied with the earlier order, and directed the complainant to leave the counsel's table and sit with the audience. When the complainant refused to comply and continued to disrupt the proceedings, the judge requested the assistance of court security officers to escort the complainant from the courtroom. The judge's tone remained calm and measured throughout.

At no time did the judge "lose total emotional control," or treat the complainant in an "abusive" manner. On the contrary, in light of the complainant's conduct, the court showed consistent patience and restraint. "[A]bsent extraordinary circumstances, the tone maintained by the judge during a proceeding is not a basis for a finding of misconduct." Boudin, C.C.J., Order, In Re: Complaint No. 444, January 23, 2007, at 4. In the present circumstances, the judge's tone was not remotely inappropriate, let alone indicative of misconduct. The judge observed appropriate courtroom decorum, and heard from all parties in full while reasonably exercising the discretion to maintain an orderly courtroom environment. See Boudin, C.C.J., Order, In re: Complaint No. 429, June 12, 2006, at 4. See also Boudin, C.C.J., Order, In re: Complaint No. 320, January 14, 2002, at 4 ("While it is conceivable that, in some circumstances, verbal attacks of counsel by a judge in open court may sufficiently exceed the bounds of propriety so as to raise a statutory issue of misconduct, a certain amount of animated dialogue is to be expected in the courtroom environment."). In the present matter, the judge did not verbally attack the complainant or otherwise engage in conduct that even approached the "bounds of propriety." Id. See 28 U.S.C. § 352(b)(1)(A)(i). See also Rules of Judicial-Conduct, Rule 11(c)(1)(A).

Ex Parte Communication, Neglect, and Erroneous Rulings

The complainant's remaining claims -- of ex parte communication, inattention, and erroneous rulings -- are also baseless. The complainant surmises that the judge engaged in ex parte communication with an identified attorney (who is not on record as counsel in the case). The complainant states that the court does not read her pleadings and fails to hold evidentiary hearings. Finally, the complainant adds that the judge has issued erroneous rulings allowing for the liquidation of the estate to the detriment of the unsecured creditors, denying the complainant's motions to recuse the judge, and prohibiting the complainant from filing pleadings.

There is no evidence that the judge engaged in improper ex parte communication with the referenced attorney or anyone else. Given the number of lengthy hearings and comprehensive orders issued in response to the complainant's submissions, the contention that the court neglected to adequately attend to the complainant's pleadings is utterly without merit. Accordingly, these claims are dismissed as frivolous. See 28 U.S.C. § 352(b)(1)(A)(iii), and Rules for Judicial-Conduct, Rule 11(c)(1)(C).

Insofar as the complaints derive from the complainant's disagreement with the substance of the court's rulings in the case, they are not cognizable. See 28 U.S.C. § 352(b)(1)(A)(ii), and Rules for Judicial-Conduct, Rule 11(c)(1)(B).

For the reasons stated, Complaints Nos. 01-10-90029, 01-11-90005, 01-11-90009, and 01-11-90010 are dismissed, pursuant to 28 U.S.C. §§ 352(b)(1)(A)(i),

352(b)(1)(A)(ii), 352(b)(1)(A)(iii), and 352(b)(1)(B). See also Rules of Judicial Misconduct, Rules 11(c)(1)(A), 11(c)(1)(B), 11(c)(1)(C), and 11(c)(1)(D).

3/31/11
Date

Sandra L. Lynch
Chief Judge Lynch