

JUDICIAL COUNCIL OF THE EIGHTH CIRCUIT

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JCP No. 08-18-90039

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In re Complaint of John Doe<sup>1</sup>

This is a judicial complaint filed by an attorney against a United States bankruptcy judge who sanctioned the attorney for contempt of an order and for misleading the court. The bankruptcy judge banned the attorney for six months from representing new bankruptcy clients, practicing before the U.S. Bankruptcy Court for a particular district, and using that court’s electronic-filing (CM-ECF) system. The bankruptcy judge also required the attorney to take 12 hours of continuing legal education in professional ethics and permanently prohibited him “from being financially or professionally involved with or connected to, whether formally or informally or otherwise,” a bankruptcy-services business, its owner, another attorney, and other individuals and entities affiliated with the business.

The judicial complaint alleges that after the bankruptcy judge entered the order sanctioning the attorney, the bankruptcy judge then engaged in “[i]mproper independent investigations and ex parte communications” by “*sua sponte* continu[ing] to investigate [the attorney] and his actions, and . . . enter[ing] directions—generally titled ‘Notice’ or ‘Referral’—either ‘cautioning’ (threatening) or taking action against [the attorney].” The attorney identifies “four major incidences” of judicial misconduct: (1) “[o]btaining and reviewing a deposition transcript from a case in which neither [the bankruptcy judge] nor [the attorney] was

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<sup>1</sup>Under Rule 4(f)(1) of the Rules Governing Complaints of Judicial Misconduct and Disability of the Eighth Circuit, the names of the complainant and the judicial officer complained against are to remain confidential, except in special circumstances not here present.

involved” and referencing that transcript in the bankruptcy judge’s “Notice to Attorney” and “Referral of Attorney . . . And His Conduct to the [State] Supreme Court’s Office of Chief Disciplinary Counsel” (“Referral”); (2) “[o]btaining . . . [the attorney’s] motion for protective order” that was made in a matter before another bankruptcy judge of the same court in an action brought by the U.S. Trustee against the bankruptcy-services business and its owner and referencing that motion in the bankruptcy judge’s Referral; (3) issuing an order without prior notice or a hearing reimposing limitations on the attorney after learning that the attorney had used his CM-ECF passcode to make a filing that bore the signature of another attorney in a case assigned to another bankruptcy judge; and (4) “*sua sponte* review[ing] the website for [the attorney’s] law firm and, based upon that website . . . issu[ing] a [“Notice, Referral, and Directive”] referring [the attorney] to disciplinary counsel in three states . . . based upon that review.”

The judicial complaint’s allegations all pertain to either an order, “Notice,” or “Referral” that the bankruptcy judge entered against the attorney. The judicial complaint’s allegations are “directly related to the merits of a decision or procedural ruling” that the bankruptcy judge entered against the attorney and therefore must be dismissed. 28 U.S.C. § 352(b)(1)(A)(ii); *accord* Judicial-Conduct and Judicial-Disability Proceedings of the Judicial Conference of the United States (J.C.U.S.) Rule 11(c)(1)(B); *see also* J.C.U.S. Rule 3(h)(3)(A) (“An allegation that calls into question the correctness of a judge’s ruling, . . . without more, is merits-related.”). To the extent that the judicial complaint alleges that the bankruptcy judge engaged in *ex parte* communications, the complaint is “lacking sufficient evidence to raise an inference that misconduct has occurred.” 28 U.S.C. § 352(b)(1)(A)(iii); *accord* J.C.U.S. Rule 11(c)(1)(D). Accordingly, the allegations must be dismissed.

The complaint is dismissed.

October 3, 2018



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Lavenski R. Smith, Chief Judge  
United States Court of Appeals  
for the Eighth Circuit