UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF NEW YORK

In re:
PAUL S. HUDSON, Case No. 00-11683

Debtor(s).

WASHINGTON 1993, INC.,

Plaintiff(s),

-against- Adversary No. 00-90091

PAUL S. HUDSON,

Defendant(s).

APPEARANCES:

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Debtor/Defendant Pro Se
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Hon. Robert E. Littlefield, Jr., Chief United States Bankruptcy Court Judge

MEMORANDUM-DECISION AND ORDER

Currently before the court is the motion of Paul S. Hudson, pro se, pursuant to Federal Rule of Bankruptcy Procedure 9024 and Federal Rule of Civil Procedure 60(b)[1] seeking reconsideration, modification, or resettlement of an order entered December 11, 2008, finding, *inter alia*, that Mr. Hudson violated Rule 9011(b)(1) and (3) (the "Rule 9011 Order"). Mr. Hudson requests that the court delete any reference to Rule 9011(b)(1) from the Rule 9011 Order and modify the reference to Rule 9011(b)(3) to note that Hudson "may" have violated this rule or, in the alternative, Mr. Hudson requests that the Rule 9011 Order be vacated.

FACTS

The court assumes familiarity with the facts as set forth in its Memorandum-Decision & Order of September 25, 2008. *Washington 1993, Inc. v. Hudson (In re Hudson)*, Ch. 7 Case No. 00-11683, Adv. No. 00-90091 (Bankr. N.D.N.Y. Sept. 25, 2008) (the "Recusal Decision") (No. 213). Although he is proceeding pro se in this matter, Mr. Hudson is an attorney. Mr. Hudson filed a letter requesting recusal (Hudson Letter, Aug. 7, 2007 (No. 190)), and later a motion for recusal (Mot. for Recusal/Disqualification and Vacatur (the "Recusal Motion") (No. 196)) based, in large part, on the allegation that the court altered the complaint filed in this adversary proceeding in violation of 18 U.S.C. § 1519 and/or New York Penal Law sections 175.20 and 195.00, thereby committing a crime. More specifically, Mr. Hudson accused the court of adding text to the "Wherefore" clause of the complaint.

The court denied the Recusal Motion and, on September 25, 2008, issued a *sua sponte* order to show cause directing Mr. Hudson to appear and show cause as to why he should not be

[1] A reference to a "Rule" is to one of the Federal Rules of Bankruptcy Procedure, and reference to "Fed. R. Civ. P." is to one of the Federal Rules of Civil Procedure unless otherwise noted.

sanctioned pursuant to Rule 9011 and/or 11 U.S.C. § 105 including, but not limited to, an admonishment, a monetary sanction, and/or referral to the Committee on Professional Standards. (No. 214.) After considering Mr. Hudson's pleadings filed in response to the order to show cause and hearing the arguments of both Mr. Hudson and his counsel, Scott Bush, Esq.,[2] the court rendered an oral ruling on December 3, 2008 (OSC Hr'g Tr., Dec. 3, 2008 (No. 237)) and entered the Rule 9011 Order on December 11, 2008 (No. 234), finding that Mr. Hudson had violated Rule 9011(b)(1) and (3). The court did not impose a monetary sanction against Mr. Hudson, but it did direct that

> [B]ased upon . . . this court's concern over the conduct, fitness, and character displayed by [Mr. Hudson], an attorney admitted to practice law in New York, in connection with his letter regarding recusal filed August 3, 2007 (DOC#188) and subsequent motion for recusal filed September 17, 2007 (DOC#196), this court is referring Mr. Hudson to the Committee on Professional Standards.

(No. 234.)

ARGUMENT

In support of reconsideration, Mr. Hudson notes that he filed the Recusal Motion under penalties of perjury, and there have been no such statements submitted by any other party. Mr. Hudson also stresses that Mr. Corvetti has not denied that he had *ex parte* communications with the clerk, case manager, or chambers, as theorized in the Recusal Motion, regarding the adding of § 727 relief to the complaint, nor did Mr. Corvetti's attorney deny the complaint was altered. In addition, Mr. Hudson indicates he had no notice that the court was considering a referral to the Committee on Professional Standards or the conclusion that he violated Rule 9011(b)(1).

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[2] Scott Bush, Esq. entered a limited appearance in this mattered on behalf of Mr. Hudson at the oral argument of the court's order to show cause. (OSC Hr'g Tr. 2, Dec. 3, 2008 (No. 237).) Although Mr. Hudson was represented by an attorney at the December 3, 2008 hearing, the court did permit Mr. Hudson, as well as his attorney, to put their arguments and positions on the record.

In further support of his motion, Mr. Hudson maintains that the evidence and the law do not support the conclusion that Rule 9011(b)(1) was violated. Mr. Hudson asserts that the Recusal Motion was not presented to harass, to cause unnecessary delay, or to judge shop, as to do so would only be against his own interest.[3] Thus, it was erroneous for the court to conclude the Recusal Motion was submitted for an improper purpose. Mr. Hudson also alleges that the court overlooked that, in conformance with the safe harbor provision of Rule 9011, he withdrew all representations that the court, its staff, or the clerk caused the complaint in this proceeding to be altered. Alternatively, Mr. Hudson argues that the court's conclusion that Rule 9011(b)(3) was violated is not supportable because it requires a showing of subjective bad faith.

DISCUSSION

Fed. R. Civ. P. 60(b)[4] is a remedy of equitable origin giving a court the discretion to

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[3] The plaintiff in the adversary proceeding, Richard Corvetti, entered into a global settlement agreement with Mr. Hudson post-trial. The District Court held that pursuant to the terms of the settlement agreement, Mr. Corvetti has no standing to file any further pleadings in connection with the denial of Mr. Hudson's discharge. *Hudson v. Corvetti*, Nos. 1:05-CV-472 (lead), 1:05-CV-560 (member) (FJS), 2007 WL 2026826 (N.D.N.Y. July 9, 2007).

[4] Federal Rule of Civil Procedure 60(b) provides, in pertinent part, that:

> On motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding for the following reasons:
>
> (1) mistake, inadvertence, surprise, or excusable neglect;
> (2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b);
> (3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party;
> (4) the judgment is void;
> (5) the judgment has been satisfied, released or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or
> (6) any other reason that justifies relief.

Fed. R. Civ. P. 60(b).

rescind or amend a final judgment. *In re Chipwich, Inc.*, 64 B.R. 670, 675 (Bankr. S.D.N.Y. 1986) (citing 11 C. Wright, A. Miller & M. Kane, Federal Practice and Procedure (1986 ed.)). As Mr. Hudson seeks relief under Fed. R. Civ. P. 60(b) generally, the court is left to speculate on the particular category under Fed. R. Civ. P. 60(b) upon which Mr. Hudson relies. Given that Mr Hudson's arguments are essentially that the court made a mistake, the court will assume Mr. Hudson seeks relief under Fed. R. Civ. P. 60(b)(1).

Mistakes by the court of both law and fact may be considered in determining a Fed. R. Civ. P. 60(b)(1) motion. *Gey Assocs. Gen. P'ship v. 310 Assocs. (In re 310 Assocs.)*, 346 F.3d 31, 35 (2d Cir. 2003). Fed. R. Civ. P. 60(b)(1) will not, however, "provide a movant an additional opportunity to make arguments or attempt to win a point already 'carefully analyzed and justifiably disposed.'" *Bousa Inc. v. United States (In re Bulk Oil (USA) Inc.*), Nos. 89-B-13380, 93 Civ. 4492 (PKL), 93 Civ. 4494 (PKL), 2007 WL 1121739, at *10 (S.D.N.Y. Apr. 11, 2007) (quoting *Matura v. United States*, 189 F.R.D. 86, 90 (S.D.N.Y. 1999)). A court should not "'reconsider issues already examined simply because [movant] is dissatisfied with the outcome of his case. To do otherwise would be a waste of judicial resources.'" *Id*. (quoting same).

Procedural Arguments

Before addressing Mr. Hudson's substantive arguments, the court will address Mr. Hudson's technical arguments. Mr. Hudson asserts that the Rule 9011 Order should be vacated because the court's order to show cause did not provide him with notice that the court was considering a referral to the Committee on Professional Standards or the conclusion that he violated Rule 9011(b)(1). A party subject to potential sanctions must receive specific notice of the conduct alleged to be sanctionable and the authority under which the sanctions are being

considered. *See, e.g.*, *In re Ames Dep't Stores*, 76 F.3d 66, 70 (2d Cir. 1996), *overruled on other grounds by Lamie v. United States Tr.*, 540 U.S. 526 (2004). In the Recusal Decision, the court indicated:

> The court is greatly distressed by the tactics Hudson is willing to employ in attempts to have the court recuse itself from this matter, especially given that Hudson is an attorney. There simply was no foundation for Hudson to falsely accuse this court of a crime. Given the seriousness of the allegations combined with the lack of any evidentiary support or minimal investigation, sanctions against Hudson appear to be warranted. Because Rule 9011(c)(1)(B) requires that the court give parties who are subjected to potential sanctions specific notice of the conduct alleged to violate Rule 9011(b), this Memorandum-Decision and Order shall serve as the requisite notice for the imposition of sanctions in this proceeding.

Washington 1993, Inc. v. Hudson (In re Hudson), Ch. 7 Case No. 00-11683, Adv. No. 00-90091, slip op. at 17-18 (Bankr. N.D.N.Y Sept. 25, 2008). The court discussed why it appeared that Mr. Hudson violated subsections (b)(1) and (3) of Rule 9011 and concluded with the directive that Mr. Hudson appear and show cause why "he should not be sanctioned, for the reasons set forth herein, pursuant to Rule 9011 and/or Bankruptcy Code § 105, including, but not limited to, an admonishment, a monetary sanction, **and/or referral to the Committee on Professional Standards**." *Id.* at 21 (emphasis added). Mr. Hudson filed a response to the court's order to show cause disputing that the Recusal Motion was filed for an improper purpose and asking the court not to refer him to the Committee on Professional Standards. (Def.'s Mem. of Law & Decl. in Resp. to Order to Show Cause (No. 228); Def.'s Supplemental Letter in Resp. to Order to Show Cause (No. 229).) Mr. Hudson was clearly on notice of his conduct alleged to be sanctionable, as well as potential sanctions. Thus, Mr. Hudson's lack of notice argument is without merit.

Mr. Hudson also argues that he withdrew his accusations that the court committed a

crime by altering a pleading filed in this court. Mr. Hudson asserts that his most recent motion for recusal of the court was based upon (1) the court's alleged prosecutorial interest, (2) judicial remarks made by the court, (3) an alleged *ex parte* communication; (4) the amendments to docket entries at the court's direction, which allegedly altered the substantive rights of the parties, and (5) the alleged alteration of the complaint in this adversary proceeding by the court or at the court's direction. Hudson argues that the first three grounds were not found to be frivolous, and the last two were withdrawn.

The court did not make specific findings that the first three grounds were frivolous. Instead, the court noted in the Recusal Decision that the first three grounds for recusal were asserted by Hudson in his three prior recusal motions, all of which were denied, and were specifically addressed by the court in its earlier decisions. Thus, the court deferred to its prior decisions. To support his contention that he withdrew the last two grounds for recusal, Hudson cites to his Reply in Support of Recusal, his Supplemental Reply in Support of Recusal, his response to the court's order to show cause, and two letters to the court filed in response to the court's order to show cause. In his Supplemental Reply, which is meant to clarify his Reply, Mr. Hudson states:

> [T]he now revealed remarks of Judge Derby at a hearing in March 2000 explain and arguably avoid the appearance of bias by Judge Littlefield as to adding 727 to the cover sheet to the complaint and as to adding a new entry on the docket for docket entry No. 1 on May 1st, 2000, noting 727 as grounds in addition to 523, **but not as to the alteration of the complaint at the direction of chambers by adding a demand for denial of discharge to the complaint prayer for relief clause without notice to the parties or motion practice.** The other grounds for recusal stated in prior motions which were previously denied by this court that have been resubmitted in this motion . . . remain, as do possible ex parte activity by Mr. Corvetti or his attorneys in secretly seeking such alteration of the complaint after the bar date had passed.

(Def.'s Supplemental Reply to Recusal Mot. (No. 208) ¶ 4 (emphasis added).) While the court acknowledges that Mr. Hudson withdrew his assertion that the court was biased based upon an amended docket entry, which the court explained was meant to conform the docket to the pleadings filed, Mr. Hudson continued to pursue the assertion that the court, or someone at its direction, altered the complaint. The other three instances Mr. Hudson claims evidence he withdrew his accusations that the court, or someone under its directive, altered the complaint all occurred after the court rendered the Recusal Decision and its order to show cause.

Rule 9011(b)(1) and (3)

Rule 9011(b) provides, in relevant part:

> By presenting to the court . . . a . . . written motion . . . an attorney or unrepresented party is certifying that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances,—
>
> > (1) it is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation . . .
> > . . . .
> > (3) the allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery . . . .

Fed. R. Bankr P. 9011(b)(1) and (3).

In support of his contention that the court erred in ruling he violated Rule 11, Mr. Hudson argues that Mr. Corvetti did not deny having *ex parte* communications with the court or clerk concerning the adding of § 727 relief to the complaint, nor did Mr. Corvetti's attorney deny that the complaint was altered. This reasoning is flawed for several reasons. Rule 9011 sanctions were imposed against Mr. Hudson because he signed the Recusal Motion; his adversary's lack of a response to the Recusal Motion is irrelevant. More importantly, the court established that the

complaint was not altered after it was filed. It appears Mr. Hudson is still trying to argue the court did alter the complaint because neither his adversary or his adversary's attorney denied it happened. Mr. Hudson overlooks that Mr. Corvetti could not oppose the Recusal Motion based upon the District Court's holding that "Corvetti cannot oppose . . . Hudson's discharge pursuant to the Settlement Agreement, which Judge McAvoy approved in its entirety on November 20, 2003." *Hudson v. Corvetti*, Nos. 1:05-CV-472 (lead), 1:05-CV-560 (member) (FJS), 2007 WL 2026826, at *4 (N.D.N.Y. July 9, 2007). Mr. Hudson reminded the court of this prohibition in the Recusal Motion. (Hudson Reply Affirmation in Supp. of Recusal Mot. (No. 203) ¶ ¶ 18, 21.)

Mr. Hudson challenges the court's conclusion that he violated Rule 9011(b)(1). He argues that the court's finding that the Recusal Motion was submitted for an improper purpose such as to delay, harass, or judge shop is nonsensical because there no longer is an opposing party in these proceedings so the only party to be prejudiced would be Mr. Hudson himself.[5] The court disagrees. With the Recusal Motion, Mr. Hudson sought not only the recusal of the court in this adversary proceeding, but also the vacatur of orders previously entered by the court in the adversary proceeding, specifically, the court's August 21, 2001 decision denying Mr. Hudson's discharge (No. 62),[6] and the court's December 30, 2005 decision affirming the denial of Mr. Hudson's discharge on remand (No. 172). Yet, Mr. Hudson failed to establish any legal or factual support for his allegations that the court, or someone at its direction, committed a crime by altering the complaint filed in this adversary proceeding. Mr. Hudson's assertions were totally

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[5] *See supra* note 3 and accompanying text.

[6] *Washington 1993, Inc. v. Hudson (In re Hudson)*, Ch 7 Case No. 00-11683, Adv No. 00-90091 (Bankr. N.D.N.Y. Aug. 21, 2001), *remanded sub nom. Hudson v. Corvetti*, No. 3:01-CV-01474 (N.D.N.Y. June 13, 2003).

without merit, requiring the conclusion that the Recusal Motion was undertaken with the intention of vacating the court's prior orders and paving the way for Mr. Hudson to be issued a discharge.[7] Requesting this relief strongly suggests that the Recusal Motion was presented for the improper purpose of collaterally attacking the court's order denying Mr. Hudson a discharge. "[A] recusal motion is an improper vehicle to dispute disagreeable adverse rulings. It is a clear abuse of such a pleading." *Ginsberg v. Evergreen Sec., Ltd. (In re Evergreen Sec., Ltd.)*, 570 F.3d 1257, 1274 (11th Cir. 2009). "Challenges to adverse rulings are generally grounds for appeal, not recusal." *Id.* (citations omitted).

Mr. Hudson argues the court's conclusion that Rule 9011(b)(3) was violated is erroneous because it requires a showing of subjective bad faith. A motion asserting that Rule 9011(b)(3) has been violated may be initiated by the court by issuance of an order to show cause. Fed. R. Bankr. P. 9011(c)(1)(B). When a Rule 9011 motion is initiated by the court, the twenty-one-day safe harbor provision of Rule 9011(c)(1)(A) is not available to the party potentially subject to sanctions. The Second Circuit has held that because a *sua sponte* Rule 11[8] motion deprives a lawyer the opportunity to withdraw the challenged document, the appropriate *mens rea* standard is subjective bad faith. *In re Pennie & Edmonds LLP*, 323 F.3d 86, 87 (2d Cir. 2003). Here, the record supports a finding that Mr. Hudson's representations in the Recusal Motion subjectively reflect bad faith, made worse, because his representations included baseless allegations of

[7] If the court's order denying Mr. Hudson's discharge is vacated, presumably, any appeals related to the order will be rendered moot. More importantly, because of the post-trial settlement between Mr. Corvetti and Mr. Hudson, there would be no plaintiff remaining to prosecute this adversary proceeding.

[8] As Rule 9011 parallels Rule 11 of the Federal Rules of Civil Procedure, case law under Rule 11 has informed the interpretation and application of Rule 9011. *In re Highgate Equities, Ltd.*, 279 F.3d 148, 151 (2d Cir. 2002).

judicial misconduct.

At the heart of Mr. Hudson's Recusal Motion was that the court committed a crime by altering a filed document, despite Mr. Hudson having no legal or factual support for his allegations. In fact, the evidence that existed was to the contrary. Before filing his letter, and later his motion, accusing the court of a crime and seeking recusal, Mr. Hudson did not take the time to engage in a reasonable fact finding investigation to determine if the original complaint filed in the adversary proceeding when it was commenced in Maryland contained a prayer for relief with different fonts, as did the alleged altered complaint. Mr. Hudson indicated he was in Albany reviewing the court's files on July 31, 2007 in connection with an appeal and, approximately one week later, he filed a letter with the court accusing it of a crime and seeking recusal. (Hudson Letter 1, Aug. 7, 2007 (No. 190).) In his letter, Mr. Hudson stated:

> If your honor agrees with the suggestion that the best course in this matter is *sua sponte* recusal with the withdrawal of prior decisions and orders and the referral of this case back to Judge Scullin for further proceedings, then this adversary should come to a final conclusion in short order. On the other hand, if your honor does not agree with this suggestion, then it is my intention to undertake formal motion practice for recusal and disqualification.

(Hudson Letter 3.)

Given the seriousness of the accusations against the court contained in Mr. Hudson's letter, at a case conference the court directed Mr. Hudson to make his request in a formal motion. (Conference Tr. 3, Aug. 29, 2007 (No. 193).) In his letter, Mr. Hudson indicated that if the court did not *sua sponte* recuse itself, he would transform his letter request into a formal motion. He made no representation that he intended to conduct any further investigations. The Recusal Motion was filed on September 17, 2007.

Mr. Hudson should have known his representations that the court altered the complaint in this proceedings were false. The original complaint, which is identical to the complaint Mr. Hudson insisted the court altered, is a document Mr. Hudson possessed at some point during this proceeding—he was served with it, it was an exhibit he offered at the March 10, 2000 hearing before the Maryland Bankruptcy Court (Derby, B.J.), and it was part of his record on appeal to the District Court. In addition, the copies of the original complaint as the exhibit and as part of the appellate record are public records Mr. Hudson has access to. This is not a case where an attorney was relying on the factual allegations of his client or documents supplied by his client; Mr. Hudson was the client and is an attorney.

With the Recusal Motion, Mr. Hudson was seeking not only the removal of the court from this adversary proceeding but also the vacatur of the court's decisions denying his discharge and affirming the denial on remand. Making false criminal accusations against a court to achieve this result cannot be condoned.

Referral to Committee on Professional Standards

Canon 3(B)(5) of the Code of Conduct for United States Judges provides that "[a] judge should take appropriate action upon learning of reliable evidence indicating the likelihood that . . . a lawyer violated applicable rules of professional conduct." Disciplinary Rule 1-102 states, in part, that a lawyer shall not "[e]ngage in conduct that is prejudicial to the administration of justice;" or "[e]ngage in any other conduct that adversely reflects on the lawyer's fitness as a lawyer." N.Y. Comp. Codes R. & Regs. tit. 22, § 1200.3 (2007), *repealed by* Rules of

Professional Conduct, N.Y. Comp. Code R. & Regs. tit. 22 § 1200 (2009).[9]

It appears that in filing the Recusal Motion, Mr. Hudson may have violated Disciplinary Rule 1-102. Mr. Hudson, as a basis for his recusal motion, accused the court of a crime, the implications of which extend beyond this adversary proceeding. The court found Mr. Hudson's conduct in accusing it of essentially taking apart the complaint, putting it in a typewriter, and adding text to the "Wherefore" clause, or directing someone else to do so, without any legal or factual support for his allegations, to be extremely troubling. More so because Mr. Hudson, although representing himself in this matter, is an attorney. For these reasons, as part of the Rule 9011 Order, the court referred this matter to the Committee on Professional Standards. The court made no specific finding of professional misconduct or a recommendation as to what, if any, disciplinary action should be taken. It has merely referred the matter to the Committee for whatever further investigation and action it deems appropriate. The court is cognizant that a report to a disciplinary authority is a serious matter that should not be undertaken lightly, however, the court believes it was bound to do so in this case by Canon 3(B)(3) of the Code of Conduct for United States Judges.

CONCLUSION

For the foregoing reasons, Mr. Hudson's motion for reconsideration is denied.

It is SO ORDERED.

Dated: August 30, 2010
Albany, New York

/s/ Robert E. Littlefield, Jr.
Hon. Robert E. Littlefield, Jr.
Chief United States Bankruptcy Judge

[9] Renumbered Rule of Professional Conduct 8.4, N.Y. Comp. Codes R. & Regs. tit. 22, § 1200 (2009). All conduct occurred prior to the April 1, 2009 enactment of the Rules of Professional Conduct.