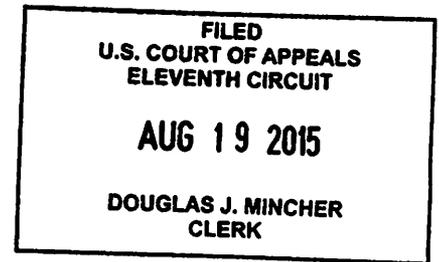


CONFIDENTIAL
BEFORE THE CHIEF JUDGE
OF THE ELEVENTH JUDICIAL CIRCUIT



Judicial Complaint Nos. 11-15-90069 through 11-15-90072

IN THE MATTER OF A COMPLAINT FILED BY _____

IN RE: The Complaint of _____ against U.S. Magistrate Judges _____ and _____ and U.S. District Judge _____ of the U.S. District Court for the _____ District of _____, and U.S. Circuit Judge _____ of the U.S. Court of Appeals for the _____ Circuit, under the Judicial Conduct and Disability Act of 1980, Chapter 16 of Title 28 U.S.C. §§ 351-364.

ORDER

_____ (“Complainant”) has filed this Complaint against United States Magistrate Judges _____ and _____, United States District Judge _____, and United States Circuit Judge _____ (collectively, “the Subject Judges”), pursuant to Chapter 16 of Title 28 U.S.C. § 351(a) and the Rules for Judicial-Conduct and Judicial-Disability Proceedings of the Judicial Conference of the United States (“JCDR”).

Background

The record shows that in August 2012 a corporation filed a lawsuit against Complainant and two corporate defendants, raising claims of trademark infringement, unfair competition, and cybersquatting. In November 2012 Judge _____, who was then a _____, entered an omnibus order in which she granted the plaintiff’s motion to compel mediation. After that, _____ entered a notice of appearance as counsel for Complainant and as co-counsel for the corporate defendants. In March 2013 the mediator reported that the case was settled in full at a mediation conference. _____ then entered an order directing the parties to file a stipulation of dismissal so that the case file could be closed.

On April 3, 2013, the parties filed a “Stipulation of Dismissal,” which was signed by _____ as attorney for the plaintiff and _____ as counsel for the defendants. On April 5, 2013, Judge _____ entered a Final Judgment Upon Consent (the Consent Judgment), which described the agreement of the parties in settling the dispute and noted that the court retained jurisdiction for the limited purpose of enforcing the terms of the judgment and the parties’ settlement agreement. The case was closed.

In June 2013 the plaintiff moved to reopen the case and for an order to show cause why the defendants should not be held in contempt for failure to comply with the terms of the Consent Judgment. The plaintiff later filed a second motion for an order to show cause, seeking to hold Complainant and others in contempt for violating the Consent Judgment. Meanwhile, in July 2013 counsel for the defendants moved to withdraw from the case, and the next month, Judge _____ granted the motion to withdraw. Judge _____ also entered an order to show cause as to why the defendants should not be held in contempt of court. On August 19, 2013, Complainant filed a response to the motion to reopen and also sought an order to show cause. The plaintiff filed a motion for a default judgment against the corporate defendants and another individual.

On December 12, 2013, Judge _____ issued a report and recommendation in which he recommended, among other things, that the plaintiff's motions to hold the defendants and others in contempt be granted in part. Judge _____ determined that the April 4, 2013 Consent Judgment was unambiguous, valid, and enforceable, and that Complainant, the corporate defendants, and others had violated it. Complainant and the plaintiff both filed objections to the R&R. On January 13, 2014, Judge _____ adopted the R&R, finding that Complainant, the corporate defendants, and others were in contempt of the Consent Judgment and determining that they were jointly and severally liable for liquidated damages. On January 21, 2014, Judge _____ entered an amended order adopting the R&R. In May 2014 Judge _____ entered an order granting the plaintiff's motion for reconsideration and for sanctions, finding that Complainant had exhibited bad faith and awarding attorney's fees and costs to the plaintiff. A final judgment was entered in favor of the plaintiff and against Complainant and others in May 2014 and an amended judgment was entered in June 2014.

The case was then reassigned to Judge _____ as the presiding district judge and to Judge _____ as the presiding magistrate judge. At a telephone conference before Judge _____ on August 18, 2014, in discussing the issue of whether the plaintiff had notified Complainant of the hearing, _____ stated, "I'm sorry I'm going to say it quite bluntly, he's a liar, he's a thief and he has no respect for the rights of others or the authority of this court." On December 19, 2014, Judge _____ issued an omnibus R&R on numerous contempt motions filed by the plaintiff and by Complainant, recommending that the plaintiff's motions be granted and that Complainant's motions be denied. Judge _____ also recommended awarding monetary sanctions and various other types of relief to the plaintiff.

Complainant filed objections to Judge _____ R&R, which Judge _____ ordered stricken for exceeding the page limits. Complainant then filed a motion for leave to file objections in excess of the page limits, which Judge _____ denied. On January 22, 2015, Judge _____ adopted Judge _____ R&R, noting that Complainant had failed to timely file compliant objections to the R&R. Judge _____ denied Complainant's motions for contempt, granted the plaintiff's motions for contempt, and

imposed various monetary sanctions on Complainant. The order also recommended and requested that an attorney for the government prosecute criminal contempt proceedings against Complainant. After that, both parties filed multiple motions seeking various types of relief.

In June 2015 Judge _____ entered an order denying Complainant's motions and enjoining him from submitting future filings without first obtaining the court's permission, finding that he had continued to abuse the legal process despite the court's previous admonishments and concluding that he should be deemed a "vexatious litigant." On June 10, 2015, Judge _____ entered an order on various motions and vacated in part the January 22, 2015 order only to the extent that it had recommended and requested that an attorney for the government prosecute criminal contempt proceedings against Complainant. Complainant filed two notices of appeal in the case. In one of the appeals, this Court has affirmed various orders entered by the district court.

Complaint

In his Complaint of Judicial Misconduct or Disability, Complainant alleges that Judge _____ improperly "permitted and/or considered" an ex parte communication made by _____ in the form of the Stipulation of Dismissal. Complainant takes issue with Judge _____ statement in the Consent Judgment that the matter was before the court on the parties' stipulation of dismissal and their request to enter a final consent judgment. Complainant asserts that he was proceeding pro se in the case and did not seek that relief. He states that he believes Judge _____ failed to liberally construe his pro se pleadings as she was required to do. Complainant asserts that Judge _____ did not follow "the exact course of the law" and violated his due process rights. He also asserts that Judge _____ actions reflected adversely on her impartiality, demonstrated "lack of competence and fairness," violated "substantive and procedural law and court rules," and violated various Canons of the Code of Conduct for United States Judges (Code of Conduct). Finally, Complainant asserts that Judge _____ "has no venue and jurisdiction over any of the matter in this action"

Complainant also takes issue with Judge _____ December 12, 2013 R&R upholding the Consent Judgment, asserting that Judge _____ provided "no analysis or methodology supporting his findings" and that his interpretation of certain terms was "improper." Complainant states that he believes Judge _____ failed to liberally construe Complainant's pro se pleadings as he was required to do. Complainant asserts that Judge _____ did not follow "the exact course of the law" and violated Complainant's due process rights. He also asserts that Judge _____ actions reflected adversely on his impartiality, demonstrated "lack of competence and fairness," violated "substantive and procedural law and court rules," and violated various Canons of the Code of Conduct. Finally, Complainant asserts that Judge _____ "has no venue and jurisdiction over any of the matter in this action"

Complainant then takes issue with Judge _____ December 19, 2014 R&R, arguing that he provided “no analysis or methodology supporting his findings” and that his interpretation of certain terms was “improper.” Complainant states that he believes Judge _____ failed to liberally construe Complainant’s *pro se* pleadings as he was required to do. He asserts that Judge _____ did not follow “the exact course of the law” and violated Complainant’s due process rights. He alleges that _____ defamed him during the August 18, 2014 hearing¹ by calling him a “liar” and a “thief,” which adversely affected Complainant’s health. Complainant asserts that Judge _____ “did not require order and decorum” at the hearing and did not require _____ to be “dignified and courteous” to Complainant, which “gave [Complainant] the appearance of judicial bias.” He asserts that Judge _____ actions reflected adversely on his impartiality, demonstrated “lack of competence and fairness,” violated “substantive and procedural law and court rules,” and violated various Canons of the Code of Conduct. Finally, Complainant asserts that Judge _____ “has no venue and jurisdiction over any of the matter in this action”

Complainant also takes issue with Judge _____ January 22, 2015 order, alleging that she did not consider his objections. He states that he believes Judge _____ failed to liberally construe his *pro se* pleadings as she was required to do. Complainant asserts that Judge _____ did not follow “the exact course of the law” and violated Complainant’s due process rights. He also asserts that Judge _____ actions reflected adversely on her impartiality, demonstrated “lack of competence and fairness,” violated “substantive and procedural law and court rules,” and violated various Canons of the Code of Conduct. Finally, Complainant asserts that Judge _____ “has no venue and jurisdiction over any of the matter in this action”

Discussion

Rule 3(h)(3)(A) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings of the Judicial Conference of the United States provides that cognizable misconduct does not include “an allegation that is directly related to the merits of a decision or procedural ruling.” The Rule provides that “[a]n allegation that calls into question the correctness of a judge’s ruling, including a failure to recuse, without more, is merits-related.” *Id.* The “Commentary on Rule 3” states in part:

Rule 3(h)(3)(A) tracks the Act, 28 U.S.C. § 352(b)(1)(A)(ii), in excluding from the definition of misconduct allegations “[d]irectly related to the merits of a decision or procedural ruling.” This exclusion preserves the independence of judges in the exercise of judicial power by ensuring that

¹ Although Complainant states the hearing occurred on August 18, 2013, the record indicates that the hearing was held on August 18, 2014.

the complaint procedure is not used to collaterally attack the substance of a judge's ruling. Any allegation that calls into question the correctness of an official action of a judge — without more — is merits-related.

To the extent Complainant's allegations concern the substance of the Subject Judges' official actions, findings, R&Rs, and orders entered in the case, the allegations are directly related to the merits of the Subject Judges' decisions or procedural rulings. Apart from the decisions or procedural rulings with which Complainant takes issue, he provides no credible facts or evidence in support of his claims that Judge _____ engaged in an improper ex parte communication, or that any of the Subject Judges were biased, violated the Code of Conduct, or otherwise engaged in misconduct.

The allegations of this Complaint are "directly related to the merits of a decision or procedural ruling," JCDR 11(c)(1)(B), and the Complaint "is based on allegations lacking sufficient evidence to raise an inference that misconduct has occurred or that a disability exists," JCDR 11(c)(1)(D). For those reasons, pursuant to Chapter 16 of Title 28 U.S.C. § 352(b)(1)(A)(ii) and (iii), and Rule 11(c)(1)(B) and (D) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings of the Judicial Conference of the United States, this Complaint is **DISMISSED**.



Chief Judge