

FILED
U.S. COURT OF APPEALS
ELEVENTH CIRCUIT
NOV 13 2015
Amy C. Nerenberg
Acting Clerk of Court

CONFIDENTIAL

**BEFORE THE CHIEF JUDGE
OF THE ELEVENTH JUDICIAL CIRCUIT**

Judicial Complaint No. 11-15-90123

IN THE MATTER OF A COMPLAINT FILED BY _____

IN RE: The Complaint of _____ against _____, U.S. Magistrate Judge for the U.S. District Court for the _____ District of _____, 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 Judge _____ (the “Subject Judge”), 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 November 2013 Complainant filed a 28 U.S.C. § 2241 petition for writ of habeas corpus, asserting “actual innocence” of two sentence enhancements that he had received following his conviction. The next month, Complainant filed, among other things, a “Motion to vacate Judg[ement] of Sent[e]nce,” a request for the production of documents, and a motion for the appointment of counsel. In January 2014 the Subject Judge entered an order directing the respondent to show cause why the habeas petition should not be granted. That order also denied Complainant’s motions. With respect to the motion to appoint counsel, the Subject Judge found that Complainant had not demonstrated that the appointment of counsel was necessary because the issues were not complex.

In February 2014 the respondent filed a response to the § 2241 petition. Complainant filed a reply, a motion for default judgment, and another motion to appoint counsel. In late February 2014 the Subject Judge granted in part the motion for default judgment to the limited extent that the court would consider the arguments upon review of the case, and denied the remainder of the motion. The Subject Judge also denied the motion to appoint counsel, again finding Complainant had not demonstrated that the appointment of counsel was necessary because the issues were not complex. After that, Complainant filed various motions, including another motion for the appointment of

counsel, which the Subject Judge denied in July 2014 for the reasons stated in his earlier order.

After additional filings, in December 2014 Complainant filed an amended § 2241 petition raising additional arguments. In March and April 2015, he filed motions seeking an expedited ruling in the case. On April 22, 2015, the Subject Judge denied the motions, stating that the court endeavored to adjudicate all matters in a timely manner, the court had a heavy habeas docket and a heavy civil and criminal caseload, district courts have broad discretion in managing their cases, and the court would consider Complainant's petition as expeditiously as possible and as the court's calendar permitted.

The next month, Complainant filed a motion to supplement his § 2241 petition, and the Subject Judge entered an order granting two previous motions to supplement that he had filed. In June 2015 Complainant filed a motion requesting that the court file a report and recommendation. In July 2015 the Subject Judge entered an order granting the motion to supplement and denying the motion for the court to file a report and recommendation, reiterating that the court would consider Complainant's habeas petition as expeditiously as possible and as the court's calendar permitted.

Complaint

In his Complaint of Judicial Misconduct or Disability, Complainant generally complains that his case has not been reviewed, even though the Subject Judge had stated on multiple occasions that the issues in the case are not complex. Complainant asserts that he has supplied overwhelming evidence of his innocence and has raised claims of "Constitutional violations" with respect to certain "penalties." He discusses the merits of his claims and states: "This case presents extraordinary circumstances, and is not being handled appropriately. This is not a complaint of timeliness, but rather of Justice and Due Process." Complainant asserts that he is being illegally detained, and he states that the delay in his case is denying him justice. Finally, Complainant states that his allegations concern "an improper motive in delaying my liberty and Constitutional Rights." He attached documents to his Complaint.

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 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 Judge’s official actions, findings, and orders entered in the case, the allegations are directly related to the merits of the Subject Judge’s 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 allegations that the Subject Judge acted with an improper motive in delaying the case 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