

FILED
U.S. COURT OF APPEALS
ELEVENTH CIRCUIT
DEC 17 2015
Amy C. Nerenberg
Acting Clerk of Court

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

Judicial Complaint No. 11-15-90126

IN THE MATTER OF A COMPLAINT FILED BY _____

IN RE: The Complaint of _____ against _____, U.S. District 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 District 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”).

As an initial matter, after Complainant filed his Complaint, he filed a supplemental statement. The filing of the supplemental statement is approved. See 11th Cir. JCDR 6.7.

Background

The record shows that in May 2015 Complainant filed a 42 U.S.C. § 1983 prisoner civil rights action form, listing one defendant and generally alleging that he was being denied certain services to which he was entitled. On the same day, he filed a motion to proceed in forma pauperis (IFP) and a “Petition/Application for Writ of Mandamus.” He then filed, among other things, a motion to amend his mandamus petition and a motion for an emergency temporary restraining order in which he generally alleged he was in imminent danger of serious physical injury.

In June 2015 the Subject Judge denied Complainant’s IFP motion and dismissed the § 1983 complaint without prejudice, finding that Complainant had “three strikes” under 28 U.S.C. § 1915(g) and that he did not show that he was in imminent danger of serious physical injury. The Subject Judge also denied Complainant’s petition for mandamus and motion to amend the mandamus petition as moot. A few days later, the Subject Judge denied the motion for an emergency temporary restraining order, finding that Complainant’s vague allegations of harm did not give rise to a claim of real and imminent harm.

After that, Complainant filed a motion to set aside the judgment, arguing that the court misrepresented that his mandamus action was a § 1983 complaint, which constituted fraud. In late July 2015 the Subject Judge denied the motion, finding that it contained no specific examples of fraud or misrepresentation on the court's part. Complainant filed a notice of appeal, and this Court clerically dismissed the appeal for want of prosecution because he failed to pay the filing and docketing fees within the required time.

Complaint

In his Complaint of Judicial Misconduct or Disability, Complainant alleges that the Subject Judge failed "to faithfully discharge the duties of his office by failing to expeditiously dispose of the business of the court." Complainant alleges that the Subject Judge "has used his office for political reasons and not upheld the Constitution of the United States as commanded by his oath of office." He alleges that the Subject Judge "deliberately misrepresented material facts" in the case in order to deny Complainant relief and that he did not follow Congress' intent under 28 U.S.C. § 1915(g). Complainant asserts that the Subject Judge intentionally labeled what was clearly captioned as a petition for writ of mandamus as a § 1983 action in order to be able to apply the three-strikes provision without regard for Complainant's safety.

Supplement

In his supplemental statement, Complainant states that the Subject Judge "appears to be engaged in a conspiracy" to deny Complainant's civil and constitutional rights in violation of certain statutes and his oath of office. He also states that the Subject Judge and "others involved in this scheme . . . have enlisted" deputy clerks who are not following the law or their oaths.

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 that Complainant challenges, he provides no credible facts or evidence in support of his allegations that the Subject Judge "used his office for political reasons," intentionally made misrepresentations, was part of a conspiracy, 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