

FILED  
U.S. COURT OF APPEALS  
ELEVENTH CIRCUIT  
JAN 29 2016  
Amy C. Nerenberg  
Acting Clerk of Court

**CONFIDENTIAL**

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

**Judicial Complaint No. 11-15-90141**

**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”).

Background

The record shows that in February 2013 Complainant filed an amended civil rights action against a “Family Court Judge,” raising various claims related to the judge’s actions in connection with Complainant’s divorce proceedings (the First Case). Among other allegations, Complainant claimed that the judge improperly discussed with the media the merits of the pending divorce proceedings over which she presided. The defendant then filed a motion to dismiss the action. In April 2013 the Subject Judge entered an order granting the defendant’s motion to dismiss, stating that the defendant had absolute judicial immunity against the claims made by Complainant arising out the divorce case. A judgment was entered dismissing the case.

In May 2013 Complainant filed a “Rule 59(e) Motion to Alter or Amend Judgment,” arguing that the determination that the defendant was entitled to absolute judicial immunity was based upon a “clear legal error.” The next month, Complainant filed a “Motion for Leave to Amend Memorandum” in support of the Rule 59(e) Motion. The Subject Judge then entered an order denying Complainant’s “Motion to Alter Clerk’s Judgment” and granting his “Motion for Leave to File Amended Memorandum.” In July 2013 Complainant filed a “First Amended Memorandum in Support of [Complainant’s] Rule 59(e) Motion . . . .” Over two years later, in July 2015 Complainant filed a motion asking the court to enter an order on his amended Rule 59(e) Motion, arguing that his filings had been languishing for over two years. In September 2015 the Subject Judge denied Complainant’s motion, stating that his Motion to Alter or Amend Judgment was

denied more than two years ago. After that, Complainant filed a "Second Amended Rule 59(e) Motion," and the defendant filed a response in opposition.

The record also shows that in April 2015 Complainant filed an amended civil rights action against multiple defendants, seeking redress for "acts committed by multiple judicial officers and their associates under the color" of state law (the Second Case). Complainant alleged that the causes of action had "nothing to do with the granting of divorce or any other domestic relations type claim" but that they "did originally occur within the context of a five (5) year divorce case." The defendants filed motions to dismiss the amended complaint. In August 2015 the Subject Judge entered an order granting the motions to dismiss. The Subject Judge found that: (1) the complaint was 273 pages long, failed to comply with Fed. R. Civ. P. 8, and should be dismissed as a "shotgun pleading"; (2) the claims against the judges were barred by absolute judicial immunity and the statute of limitations; and (3) the complaint failed to state a plausible claim for relief against certain defendants. A judgment was entered dismissing the action.

After that, Complainant filed a Rule 59(e) Motion to Alter or Amend Judgment and an amended memorandum in support of the motion. In October 2015 Complainant filed a motion to recuse or disqualify the Subject Judge, alleging that he had perpetrated a "three (3) year spree of ruling infirmities and misconduct," which established that he had "an extrajudicial bias against" Complainant. In November 2015 the Subject Judge denied Complainant's Motion to Alter or Amend Judgment and denied the motion to recuse. With respect to the motion to recuse, the Subject Judge stated, "Adverse rulings against a party in a case are not such extrajudicial bias and do not show pervasive bias and prejudice, and therefore are not grounds for recusal."

The record shows that in August 2015 Complainant filed a 42 U.S.C. § 1983 civil rights action against a county, a county commissioner, and two state court judges, generally alleging that the defendants violated his constitutional rights (the Third Case). He then filed an emergency motion for a temporary restraining order and preliminary injunction, seeking to bar the defendants and their agents from conducting a hearing related to Complainant's divorce proceedings and from rendering any further orders in those proceedings. A few days later, the Subject Judge denied the motion, determining that Complainant essentially was seeking an order enjoining state court judges from proceeding with a hearing in his divorce case, that the relief was barred by the "Rooker-Feldman doctrine," and that Complainant could not use § 1983 to appeal from proceedings in a state court action.

The defendants then filed motions to dismiss the amended complaint, and two defendants filed a motion seeking to enjoin Complainant from filing further actions related to the divorce proceedings. In October 2015 Complainant filed a motion to recuse or disqualify the Subject Judge and a Rule 59(e) Motion to Alter or Amend Judgment. In

September 2015, the Subject Judge entered an order granting the defendants' motion for injunctive relief and permanently enjoined Complainant from filing in the federal district court any lawsuit against the county and any judge involved in his divorce case without obtaining the Subject Judge's advance permission. The Subject Judge found that the case was the fifth lawsuit Complainant had filed related to his divorce case, that all of the cases had been dismissed, and that it was "abundantly clear that this wasteful and vexatious litigation is intended to relitigate issues decided against [Complainant] in state court and to harass the judges and other parties involved in his case."

The Subject Judge also entered an order denying the motion to recuse, determining that adverse rulings did not constitute extrajudicial bias, did not show pervasive bias and prejudice, and were not grounds for recusal. The Subject Judge then entered an order granting the defendants' motions to dismiss, finding that: (1) Complainant failed to state a claim against the judges in their official capacities and that, in any event, they were entitled to absolute judicial immunity; and (2) the claims against the county were "barred by the Rooker-Feldman doctrine and Younger abstention."

### Complaint

In his Complaint of Judicial Misconduct or Disability, Complainant states that the Subject Judge and his staff "are attempting to perpetrate a fraud upon the court by knowingly producing false orders in direct contravention to prevailing legal standards in a systematic effort to delay and dispose of complaints" that contain merit and threaten to expose a pattern of judicial misconduct in the state court. With respect to the First Case, Complainant asserts that the Subject Judge "utilized a systematic pattern of delay and deception to unlawfully dismiss" the case "in an effort to shield from scrutiny a Superior Court gone rogue." Complainant takes issue with the Subject Judge's order dismissing the case, asserting that it contained citations to case law that were inapplicable to the finding that the defendant had absolute judicial immunity.

Complainant contends that the defendant's act of speaking on the merits of a case while it was pending in her court was "non-judicial in character" and not entitled to judicial immunity. Complainant then states that it has been over two years since the Subject Judge permitted him to file an amended Rule 59(e) Motion and that the delay in ruling on the motion is based on an improper motive. Complainant takes issue with the Subject Judge's September 2015 order finding that the motion to alter or amend had been denied more than two years earlier, asserting that the order was an example of "obfuscation and fraud" and showed an attempt to avoid following the law.

With respect to the Second Case, Complainant alleges that the Subject Judge's actions "are further evidence that the Court has not inadvertently erred, but committed gross misconduct with scienter." Complainant takes issue with the Subject Judge's August 2015 dismissal order, contending that it contained case law citations that were

inapplicable to the ruling and was “devoid of argument.” He states that the Subject Judge’s rulings were “so divorced from any reasonable legal reality that they could only be considered a systematic pattern of either gross indifference or abject fraud — both worthy of the stain of judicial misconduct.”

Complainant then states that the Subject Judge’s finding that the claims against the judges were barred by the statute of limitations was “an intentional fiction.” He contends that the claims were not barred by the statute of limitations, notes that only one defendant raised the issue in the motion to dismiss, and alleges that the court was unlawfully “ruling/advocating for a motion to dismiss sue sponte.” Complainant alleges that the Subject Judge’s finding that the claims against the judges were barred by absolute judicial immunity was “another intentional fiction,” and he states that he established in his complaint that the judges were not entitled to judicial immunity.

With respect to the Third Case, Complainant alleges that the Subject Judge’s September 2015 order dismissing the case was “devoid of any argument or legal substantiation” and constituted “additional evidence of a systematic pattern of judicial misconduct.” Complainant argues that the Rooker-Feldman doctrine is inapplicable because his claims related to “the purported unconstitutionality of the Family Court,” not state court judgments. He states, “Given the basic and foundational nature of this clearly delineated abstention doctrine and the dubious nature of the [Subject Judge’s] Court’s past evidentiary inclinations, there could be no other plausible explanations for its improper invocation other than it illustrates the [Subject Judge’s] Court’s systematic pattern of either gross indifference or moral turpitude . . .” In conclusion, Complainant alleges that the Subject Judge’s “perpetration of a three (3) year spree of judicial misconduct and ruling infirmity” showed that he “purposefully intend[ed] to get every decision and action wrong” and suggests that the court was “disinfecting its docket by extending refuge to one of its own.” Complainant attached various 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, rulings, and orders entered in Complainant's cases, 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 acted with an illicit or improper motive, attempted to perpetrate a fraud on the court, produced false orders, acted to protect state court judges, 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**.



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Chief Judge