

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. 11-15-90145

IN THE MATTER OF A COMPLAINT FILED BY _____

IN RE: The Complaint of _____ against _____, former 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 former 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”). The Subject Judge retired in _____.

Background

The record shows that in 2006 Complainant filed an initial and a second 28 U.S.C. § 2254 petition for writ of habeas corpus, raising claims stemming from his state court criminal case and probation proceedings. In November 2007 the Subject Judge issued a report recommending that certain grounds in the § 2254 petitions be dismissed for failure to state a cognizable claim. The district judge adopted the report and recommendation.

In October 2008 the Subject Judge issued a report recommending that Complainant’s § 2254 petitions be denied, generally finding that he had failed to establish that he was entitled to relief on his claims. The district judge adopted the report and recommendation and denied the § 2254 petitions with prejudice. This Court denied Complainant’s motion for a certificate of appealability.

Complaint

In his Complaint of Judicial Misconduct or Disability, Complainant generally takes issue with the Subject Judge’s October 2008 report recommending that his § 2254 petitions be denied, and he asserts that the Subject Judge conspired to secure his conviction. Complainant also discusses his state court criminal case and probation proceedings.

Discussion

Rule 11(e) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings of the Judicial Conference of the United States provides, “The chief judge may conclude a complaint proceeding in whole or in part upon determining that intervening events render some or all of the allegations moot or make remedial action impossible.” With respect to this rule, the “Commentary on Rule 11” states in part, “Rule 11(e) implements Section 352(b)(2) of the Act, which permits the chief judge to ‘conclude the proceeding’ if ‘action on the complaint is no longer necessary because of intervening events,’ such as a resignation from judicial office.”

In light of the Subject Judge’s retirement, “intervening events render some or all of the allegations moot or make remedial action impossible,” JCDR 11(e). For this reason, pursuant to Chapter 16 of Title 28 U.S.C. § 352(b)(2) and Rule 11(e) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings of the Judicial Conference of the United States, this Complaint proceeding is **CONCLUDED**. The conclusion of this proceeding in no way implies that there is any merit to Complainant’s allegations against the Subject Judge.



Chief Judge