



**FOR THE JUDICIAL COUNCIL
OF THE ELEVENTH CIRCUIT**

111590158

**IN RE: COMPLAINT OF JUDICIAL
MISCONDUCT OR DISABILITY**

ON PETITION FOR REVIEW*

Before: HULL, MARCUS, WILSON, PRYOR, MARTIN, JORDAN, ROSENBAUM, and JULIE CARNES, Circuit Judges; MOORE, MERRYDAY, THRASH, BOWDRE, LAND, STEELE, WATKINS, and WOOD, Chief District Judges.

Upon consideration of the petitioner’s complaint by a review panel consisting of Judges Hull, Wilson, Pryor, Land, and Wood, the order of Chief Judge Ed Carnes filed on 4 March 2016, and of the petition for review filed by the complainant on 8 April 2016, with no non-disqualified judge on the Judicial Council Review Panel having requested that this matter be placed on the agenda of a meeting of the Judicial Council,

The Judicial Council Review Panel hereby determines that the disposition of this matter was proper and said disposition is hereby **AFFIRMED**.

The foregoing actions are **APPROVED**.

FOR THE JUDICIAL COUNCIL:

Frank M Hull

United States Circuit Judge

* Chief Circuit Judge Ed Carnes, Circuit Gerald Bard Tjoflat, and Chief District Judge M. Casey Rodgers did not take part in the review of this petition.

FILED
U.S. COURT OF APPEALS
ELEVENTH CIRCUIT
MAR 04 2016
Amy C. Nerenberg
Acting Clerk of Court

CONFIDENTIAL
BEFORE THE CHIEF JUDGE
OF THE ELEVENTH JUDICIAL CIRCUIT

Judicial Complaint No. 11-15-90158

IN THE MATTER OF A COMPLAINT FILED BY _____

IN RE: The Complaint of _____ against _____, U.S. Circuit Judge for 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 Circuit 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 1993 Complainant filed a complaint against the _____ Police Department and other defendants alleging employment discrimination. After various amended complaints, in February 1996 the district court dismissed Complainant’s fourth amended complaint with prejudice because he had violated a local rule by failing to respond to the defendants’ motions to dismiss with a memorandum of law. Complainant appealed, and in 1998 a panel of this Court on which the Subject Judge sat affirmed the dismissal of his complaint.

In June 1998 Complainant filed a lawsuit against the same police department and other defendants, raising claims of discrimination, retaliation, hostile work environment, and conspiracy. The district judge dismissed the complaint, finding that it was frivolous and failed to state a claim on which relief could be granted. In appeal No. _____, this Court vacated the district court’s order, holding that Complainant had stated a prima facie case as to his hostile work environment, retaliatory discharge, and conspiracy claims, and that he should be given the opportunity to amend his complaint with respect to a claim brought under the Americans with Disabilities Act.

After that, Complainant filed an amended complaint raising various claims. The defendants filed motions to dismiss the amended complaint. In August 2000 a magistrate judge issued a report recommending that certain motions to dismiss be granted with prejudice, that others be dismissed without prejudice, and that Complainant be given a

last opportunity to amend his complaint. The district judge adopted the report and recommendation. In November 2000 Complainant filed a second amended complaint in which he argued in part that certain defendants had fraudulently concealed documents and that the district judge had aided them by not addressing the issue. The defendants filed motions to dismiss the second amended complaint.

In August 2001 the magistrate judge issued a report recommending that all but one of the motions to dismiss be granted with prejudice, finding that Complainant had failed to state a claim as to those defendants. The magistrate judge recommended that the motion to dismiss filed by “the County Defendants” be denied. The district judge adopted in part the report and recommendation, granted certain defendants’ motions to dismiss, and ordered that the County Defendants’ motion to dismiss would be taken under consideration as a motion for summary judgment. Complainant then filed a motion for summary judgment. In March 2002 the district court entered an order granting the County Defendants’ motion for summary judgment and denying Complainant’s motion for summary judgment as moot. The court found that Complainant’s claims against the County Defendants were barred by the doctrine of res judicata. Complainant appealed.

In February 2003 a panel of this Court on which the Subject Judge sat affirmed, holding that the district judge did not commit error or abuse his discretion in: (1) dismissing defendants because Complainant failed to adequately plead claims against them; (2) granting summary judgment in favor of the County Defendants on res judicata grounds; (3) dismissing unserved defendants; (4) refusing to appoint counsel for Complainant; and (5) refusing to recuse himself from the case. Meanwhile, Complainant filed in the district court a motion to reverse the order granting summary judgment in favor of the County Defendants, which the district court denied. Complainant appealed and moved to proceed in forma pauperis (IFP) on appeal. This Court denied the IFP motion, determining that the appeal was frivolous. Complainant filed a motion for reconsideration, and a two-judge panel of this Court on which the Subject Judge sat denied the motion because the appeal was frivolous.

In April 2004 Complainant filed an amended complaint against numerous defendants, and he argued in one count that the Subject Judge and others conspired to ignore “fraudulent concealment” of certain items in an earlier case. The district court dismissed the complaint as barred by res judicata, as frivolous, and for failure to state a claim. This Court affirmed that judgment, holding in part that the district court did not err in dismissing Complainant’s claims relating to alleged fraudulent concealment because the allegations were conclusory and unwarranted factual deductions.

In March 2006 Complainant filed a lawsuit against the Subject Judge and other defendants, alleging, among other things, that the Subject Judge and others covered up and refused to acknowledge a “Case Proving Remand/Mandate Order” and “Fraudulent Concealment of the Case Proving Evidence.” The district court dismissed the complaint

with prejudice as frivolous. Complainant then filed multiple motions seeking various types of relief, which the district court denied. Complainant appealed and moved to proceed IFP on appeal. This Court denied the IFP motion, determining that the appeal was frivolous. In December 2007 this Court denied certain motions Complainant had filed and on its own motion dismissed the appeal as frivolous.

In June 2008 Complainant filed a civil rights action against the Subject Judge and numerous other defendants, alleging in part that the judge defendants conspired to “fraudulently conceal” certain “case proving evidence” and disobeyed this Court’s mandate in an earlier appeal. The next month, the district court dismissed the complaint with prejudice, finding that it failed to comply with the pleading rules, was frivolous, and failed to state a claim, and that various claims were barred by the doctrine of res judicata. Complainant filed a notice of appeal, and in March 2011 this Court clerically dismissed the appeal for want of prosecution. In January 2011 Complainant filed an amended notice of appeal, and in May 2011 this Court dismissed the appeal for lack of jurisdiction because the notice of appeal was untimely as to any district court order.

Earlier Complaint

Complainant filed an earlier Complaint of Judicial Misconduct or Disability against a former United States Circuit Judge in which he argued that the judge had acted to cover up certain matters. In May 2014 that Complaint was concluded on the ground that intervening events rendered the allegations moot. Complainant then filed a petition for review, as well as a “Motion to Disqualify the Entire _____ Circuit . . .” In November 2014 the Judicial Council Review Panel, in an order signed by the Subject Judge, affirmed the disposition of the Complaint.

Present Complaint

In the present Complaint of Judicial Misconduct or Disability, Complainant states that his Complaint is against the Subject Judge “and every Judge, et al, involved for illegally working together to illegally ‘Cover-Up’ the Fact Finding Order” in appeal No. _____ “and every timely filing related thereto.” Complainant states that the “order” in appeal No. _____ is “based upon arguments stated by the _____ Circuit that were never denied,” and he sets out what he claims are “irrefutable facts,” including that: (1) in response to a “Court Subpoena Order,” the police department failed to disclose certain “Case Proving Evidence”; (2) the Subject Judge and others “illegally refused/failed to apply Rule 37(b)(2)(C) through-out the first and second Lawsuits and thereby Denied [Complainant] a fair chance to obtain an Attorney with the Case Proving evidence in hand”; and (3) “every other Judge involved has been illegally Covering-Up for them ever since.”

Complainant also states that there are “many Covered-Up filings that required rule 37(b)(2)(C) to be applied and this Conspiracy addressed,” and he asserts that the November 2014 order signed by the Subject Judge in the earlier Complaint of Judicial Misconduct or Disability matter was used to “illegally dismiss” those filings. Complainant requests that the recusal motion he submitted in connection with the earlier Complaint matter be “given a direct answer by this Circuit” and that the present matter be forwarded to the United States Congress. He attached multiple 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.

Furthermore, the “Commentary on Rule 3” provides:

The phrase “decision or procedural ruling” is not limited to rulings issued in deciding Article III cases or controversies. Thus, a complaint challenging the correctness of a chief judge’s determination to dismiss a prior misconduct complaint would be properly dismissed as merits-related—in other words, as challenging the substance of the judge’s administrative determination to dismiss the complaint—even though it does not concern the judge’s rulings in Article III litigation.

To the extent Complainant’s allegations concern the substance of the Subject Judge’s official actions, orders, and opinions entered in Complainant’s appeals and in the proceedings related to his earlier Complaint of Judicial Misconduct or Disability, 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 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