

JUN 03 2016

CONFIDENTIAL

BEFORE THE CHIEF JUDGE
OF THE ELEVENTH JUDICIAL CIRCUIT

David J. Smith
Clerk

Judicial Complaint Nos. 11-16-90021 and 11-16-90022

IN THE MATTER OF A COMPLAINT FILED BY _____

IN RE: The Complaint of _____ against U.S. Magistrate Judge _____
and U.S. District Judge _____ of 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 _____ and United States District Judge _____ (collectively, “the Subject Judges”), 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 September 2015 Complainant filed a lawsuit against three _____ judges and a member of the _____, generally alleging that the defendants were part of a conspiracy and violated his rights in connection with a warrant that issued for his arrest in _____. On the same day, he also filed, among other things, a “Motion Diversity Jurisdiction,” a motion for leave to proceed in forma pauperis (IFP) with an Affidavit of Indigency, a “Supplemental Complaint,” and a motion seeking to “restrict communication.” A couple of days later, he filed an amended Affidavit of Indigency. On October 19, 2015, Complainant filed an unsigned amended complaint in which he alleged that various parties violated 18 U.S.C. § 1001, and he filed a document titled “Clarifications.”

Also on October 19, Judge _____ issued a “Related Case Order and Track Two Notice,” along with a form that the parties could fill out if they consented to have a magistrate judge conduct all proceedings in the case. The next day, Judge _____ issued an order in which she deferred ruling on Complainant’s amended Affidavit of Indigency, which she construed as a motion to proceed IFP, and she directed Complainant to file an amended complaint by November 5, 2015. Judge _____ determined that Complainant’s initial complaint failed to allege facts sufficient to support an exercise of personal jurisdiction over the defendants and failed to state a claim on

which relief could be granted. In a footnote, Judge _____ denied Complainant's initial IFP motion and Affidavit of Indigency as moot in light of the amended Affidavit of Indigency. In closing, Judge _____ stated that although it was "doubtful" that Complainant could overcome the deficiencies in the complaint, he would be afforded an opportunity to file an amended complaint.

On November 6, 2015, Complainant filed a motion to "rescind" Judge _____ order, arguing that: (1) the order conflicted with Judge _____ October 19, 2015 order; (2) the order contained "an assortment of legal technical errors, numerous grammatical errors, false statements, misrepresentations and exceedingly prejudice [sic]"; and (3) he had not consented to have a magistrate judge act in the proceedings. On November 9, 2015, Judge _____ entered an order striking Complainant's motion to restrict communication because he did not sign the motion. The order also provided that the motion was patently frivolous because it requested that the court enjoin the defendants from communicating with each other, and the court would not entertain such a motion even if it were properly signed and filed.

A few days later, Judge _____ entered an order denying various motions Complainant had filed, including his motion to rescind Judge _____ order, but gave him until December 15, 2015 to file a second amended complaint. Judge _____ found that Judge _____ was correct to require Complainant to file an amended complaint, and the deficiencies noted by Judge _____ were "well-founded." Judge _____ also stated that the court liberally construed Complainant's pleadings because he was proceeding *pro se*, and noted that "the Clerk of Court construed" his unsigned document as an amended complaint. The order stated that Complainant had submitted "verbose documents," it commented on the "rambling nature" of his motion to rescind, and it noted that he referenced "a myriad of documents."

On November 23, 2015, Complainant filed a document titled "Endorsed Order Dispute" in which he took issue with Judge _____ order denying the motion to restrict communication, arguing that her statement that she would not entertain the motion even if it were signed was prejudicial, violated the Federal Rules of Civil Procedure, and was intended to intimidate him. He attached various documents to the paper. The next month, he filed a motion to recuse the Subject Judges, arguing that they had "mocked and bullied" him, misrepresented his claims and the law, and "recklessly omitted crucial evidence." He also reiterated his claim that he had not consented to have a magistrate judge preside in the matter, and stated that he suspected that one of the Subject Judges had *ex parte* communications with the defendants in the case.

The Subject Judges then entered orders denying the motion to recuse, generally finding that Complainant did not establish a basis for their recusal. In January 2016 Judge _____ issued a report recommending that Complainant's amended Affidavit of Indigency be denied and that the case be dismissed for lack of personal jurisdiction.

Judge _____ found that even if the court construed the “Endorsed Order Dispute” as “validating” Complainant’s previously filed amended complaint, the amended complaint still failed to demonstrate that the court had personal jurisdiction over the defendants. After that, Judge _____ entered an order adopting the report and recommendation and dismissing the case for lack of personal jurisdiction over the defendants.

Complaint

In his Complaint of Judicial Misconduct or Disability, Complainant generally takes issue with the Subject Judges’ orders entered in the case, and he alleges that the Subject Judges engaged in “bullying, misrepresenting, making false statements and omitting critical information and slurring and condescending the Complainant,” committed a fraud upon the court, and violated the Code of Conduct for United States Judges. He also contends that the Subject Judges failed to liberally construe his pleadings, as they were required to do.

Complainant then takes issue with various aspects of Judge _____ October 2015 order directing him to file an amended complaint, contending that her order was confusing and that she deliberately omitted certain facts and law, failed to provide reasons for her ruling, and made false statements. He contends that her actions created an “appearance of impropriety and negligence,” showed an appearance of partiality towards her “_____ Colleagues,” suggested incompetence or “ineptness,” and constituted a fraud upon the court. Complainant also takes issue with Judge _____ findings, states that she failed to serve the opposing parties, and complains that she rendered a dispositive decision in a footnote. Complainant then takes issue with Judge _____ statement that it was “doubtful” that he could overcome the deficiencies in his complaint, submitting that the statement was “mean” and “served no purpose but to intimidate.” Finally, he notes that he did not consent to have a magistrate judge act in the case.

Complainant also generally takes issue with Judge _____ findings and orders, contending that they were confusing, did not include sufficient explanation, and contained “technical and substantive errors.” Complainant contends that Judge _____ use of certain words such as “host,” “pro se,” “verbose,” and “myriad” showed a “pattern of disdain and condescending towards the Complainant.” He takes issue with her statement that she would not consider his motion to restrict communication even if it were signed, stating that to deny him “the right to appeal, is blasphemous and treasonous and violation [sic] of laws and rules and civil liberties of our country.” He also complains that Judge _____ stated that the clerk had construed a filing as an amended complaint, submitting that the clerk had no such authority and that it was “part of a further pattern of impartiality.” He contends that Judge _____ failed to address his argument that he did not consent to have a magistrate judge act in the case.

In a document titled “Chief Complaint Outlined,” Complainant discusses the background leading up to his lawsuit and generally reiterates his allegations. Among other things, Complainant alleges that the Subject Judges were not impartial, mocked and belittled him, misrepresented his statements and arguments, and omitted material facts. In addition, Complainant states that he “suspects” one of the Subject Judges engaged in an ex parte communication with the defendants, and that Judge _____ “is the number one suspect.” In support, Complainant states that he received a “Case Management” packet which indicated the case was going forward, but that Judge _____ dismissed the case the next day, suggesting that she had spoken with the defendants. Complainant asserts that Judge _____ acted outside the scope of her authority because Complainant did not consent to have her act in the case. Finally, he suggests that the Subject Judges conspired to dismiss his case. He 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 Judges’ official actions, findings, reports, and orders entered in the case, the allegations are directly related to the merits of the Subject Judges’ decisions or procedural rulings. Furthermore, contrary to Complainant’s allegation, Judge _____ did exceed her authority by entering an order in the case without the parties’ consent. Although a magistrate judge does not have the authority to rule on a dispositive motion without the parties’ consent, a magistrate judge may rule on certain pre-trial matters without such consent. See 28 U.S.C. § 636(b)(1)(A). That is what happened in this case.

Apart from the decisions or procedural rulings that Complainant challenges, he provides no credible facts or evidence in support of his claims that the Subject Judges acted with an illicit or improper motive, were not impartial, treated him in a demonstrably

egregious and hostile manner, were incompetent, engaged in improper ex parte communications, conspired to dismiss 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