

CONFIDENTIAL

FILED
U.S. COURT OF APPEALS
ELEVENTH CIRCUIT

OCT 02 2018

David J. Smith
Clerk

BEFORE THE ACTING CHIEF JUDGE
OF THE ELEVENTH JUDICIAL CIRCUIT

Judicial Complaint Nos. 11-18-90046 through 11-18-90057

IN THE MATTER OF A COMPLAINT FILED BY _____

IN RE: The Complaint of _____ against United States Magistrate Judge _____ and United States District Judge _____ of the United States District Court for the _____ District of _____, and United States Circuit Judges _____, _____, _____, _____, _____, _____, _____, _____, and _____ of the United States 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 Magistrate Judge _____, United States District Judge _____, and United States Circuit Judges _____, _____, _____, _____, _____, _____, _____, _____, and _____ (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”). Judge _____ retired in _____.

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

Background

The record shows that in June 2017 Complainant, on behalf of himself, his unborn child, and a class of unborn children, filed a “Petition for Extraordinary Relief by Mandamus, Procendendo and Verified Complaint for Injunctive, Declaratory Relief” against a state and other defendants. Complainant, among other things, alleged that he had been deprived of his ability to assert his parental rights and denied a guardian ad litem in violation of his constitutional rights, and he sought injunctive and other relief. He also filed a motion to proceed in forma pauperis (IFP). Judge _____ entered an order granting the IFP motion and directing the clerk to submit the matter to the district court for a frivolity determination under 28 U.S.C. § 1915(e)(2).

Later in June 2017, Judge _____ entered an order denying Complainant’s request for a preliminary injunction and dismissing the case pursuant to § 1915(e)(2). Judge _____ found that Complainant’s unborn child lacked standing to sue in his own right, and that Complainant otherwise did not establish he was entitled to the relief he sought. Complainant then filed, among other things, a motion for reconsideration in which he took issue with the consideration of his case under the Prison Litigation Reform Act (PLRA), noting that he was not incarcerated. In July 2017 Judge _____ entered an order denying the motion for reconsideration, finding Complainant did not establish a basis for reconsideration, and denying his remaining motions as moot. In a footnote, Judge _____ stated that although Congress used the word “prisoner” in § 1915, the _____ Circuit has held that the statute also applies to non-prisoner indigent litigants. Complainant appealed.

Complainant then filed in the circuit court an emergency motion for a ruling by a three-judge panel, which a panel comprised of Judges _____, _____, and _____ denied. In September 2017 Complainant filed a document entitled “Emergency Preliminary Injunction,” which a panel comprised of Judges _____, _____, and _____ denied. In February 2018 a panel comprised of Judges _____, _____, and _____ affirmed the district court’s dismissal of Complainant’s case. The panel held that: (1) the district court’s application of §1915(e)(2)(B)(i) was constitutional; (2) the court did not abuse its discretion by dismissing the complaint without opportunity to amend; and (3) Complainant abandoned his remaining arguments. Complainant filed a petition for rehearing en banc and a motion for the certification of questions to the Supreme Court, which the panel comprised of Judges _____, _____, and _____ denied.

The record shows that in August 2017 Complainant, on behalf of his unborn child, filed: (1) a “Petition for Writ of Habeas Corpus” in which he alleged that his child was being deprived of constitutional rights in certain state court proceedings; (2) a motion to proceed IFP; and (3) an emergency motion for injunctive relief. On the same day, Judge _____ granted the IFP motion and directed the clerk to submit the matter to the district court for a frivolity determination under § 1915(e)(2).

A couple of days later, Judge _____ entered an order dismissing the action and denying the request for emergency relief, finding the action was identical to the previous action Complainant had filed and that the petition identified no new circumstances that warranted reconsideration of the court’s prior ruling. Complainant filed a motion for reconsideration, which Judge _____ denied, finding Complainant was not entitled to habeas relief as he was not in custody. Complainant filed a notice of appeal.

On appeal, Complainant filed a motion for an extension of time to file his brief and for free access to documents on PACER. In November 2017 Judge _____

entered an order granting in part the request for an extension of time and denying the motion for free access to PACER. Later that month, the circuit court clerically dismissed the appeal for want of prosecution due to Complainant's failure to timely file a brief.

The record shows that in September 2017 Complainant and his newborn child filed a lawsuit against Judges _____, _____, _____, and others, alleging in part that the defendants violated his right of access to the courts and conspired to deprive him of his rights. He also filed a motion to proceed IFP, and a magistrate judge who is not one of the Subject Judges granted the IFP motion and directed the clerk to submit the action to the district court for review under § 1915(e)(2)(B).

In late September 2017 Complainant filed in the circuit court a petition for writ of mandamus and prohibition, seeking to have the district court expedite the proceedings and to immediately process and issue summons. He also filed a motion to proceed IFP. The next month, he filed a motion to stay certain state court proceedings, which a panel comprised of Judges _____, _____, and _____ denied. In November 2017 Judge _____ denied Complainant's IFP motion because his petition was frivolous. After that, the circuit court clerically dismissed the petition for want of prosecution.

In April 2018 in the district court, a district judge who is not one of the Subject Judges dismissed Complainant's complaint, finding the claims: (1) against the defendant judges were barred by the doctrine of absolute judicial immunity; (2) against another defendant were barred by the doctrine of quasi-judicial immunity; and (3) for injunctive relief could not be granted against any of the defendants. The order also denied a motion Complainant had filed requesting to file pleadings electronically.

Finally, the record shows that in October 2017 Complainant filed in a district court in _____ a lawsuit against multiple defendants, and he moved to proceed IFP. Later that month, a district judge denied an emergency motion for injunctive relief Complainant had filed and transferred the case to the United States District Court for the _____ District of _____. After that, Judges _____ and _____ recused themselves from the case. A magistrate judge who is not one of the Subject Judges then granted Complainant's motion to proceed IFP and directed the clerk to submit the action to the district court for review under § 1915(e)(2)(B). Complainant then filed, among other things, a motion requesting access to the court's electronic filing system.

Complaint

In his Complaint of Judicial Misconduct or Disability, Complainant generally alleges that pro se and indigent litigants are not treated fairly in the courts, and he complains that his claims were reviewed under the PLRA despite that he is not a prisoner, in violation of his constitutional rights. He states that indigent litigants: (1) have their cases "summarily dismissed and silenced by Judicial Legislative process not detailed in

Federal Rules of Civil Procedures”; (2) are “injured and retaliated against with consorted effects to censor their voice by attrition”; and (3) “do not get equal notice in modern day ECF terms.”

Next, Complainant alleges that district judges, “[p]rimarily” Judges _____ and _____, “acted in a repugnant & vile manner towards a US Citizen” exercising his First Amendment rights to petition for redress, and acted “arbitrarily & egregiously usurping [sic] Article III power to war against ‘We the People.’” Complainant alleges that the circuit court Subject Judges: (1) “do not act under obligation of Original Constitutional contract, but rather under malice, discontent . . .”; (2) “further[ed] the illegal scheme by ignoring fundamental Constitutional protections and the Rule of Constitutional Law”; and (3) “uph[eld] Judicial Legislation” in applying the PLRA to non-prisoners. In a footnote, he states that “[n]umerous _____ Circuit judges have worked in concert to deprive me of a relationship with my child.”

Complainant then takes issue with the transfer of one of his cases from _____ to _____, and alleges that the United States District Court for the _____ District of _____ has not responded to his objections to the transfer and continued to act despite a notice of appeal being filed, which constituted a “flagrant usurpation of judicial power.” He contends that the Subject Judges are not entitled to judicial immunity and that their rulings are void. He then takes issue with the actions of individuals other than the Subject Judges, complains that he has not been permitted to file documents electronically, and asserts that “the Clerk and the Court” consistently act in bad faith towards indigent litigants. He attached various documents to his Complaint.

Supplements

In his first supplemental statement, Complainant takes issue with the processing of certain documents he submitted to the circuit court, contending that the return of one of his motions should be added to the “list of evil-handed malfeasance occurring in the _____ Circuit living room.” He also asks, “are opioids being used?” He attached documents to the supplement. In the second supplement, Complainant takes issue with the processing of his documents in the district court. He attached documents to the second supplement.

Discussion

Judge _____

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.”

To the extent the Complaint concerns Judge _____, in light of Judge _____ 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** to the extent it concerns Judge _____. The conclusion of this proceeding in no way implies that there is any merit to Complainant’s allegations against Judge _____.

The Remaining Subject Judges

Rule 3(h)(3)(A) 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 Judges _____, _____, _____, _____, _____, _____, _____, _____, _____, and _____ official actions, findings, rulings, and orders in his cases and appeals, the allegations are directly related to the merits of those Subject Judges’ 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 Judges _____, _____, _____, _____, _____, _____, _____, _____, and _____ acted with an illicit or improper motive, were biased against Complainant or indigent litigants, or otherwise engaged in misconduct.

With respect to Judges _____, _____, _____, _____, _____, _____, _____, _____, and _____,

_____, the allegations of this Complaint are “directly related to the merits of a decision or procedural ruling,” and the Complaint “is based on allegations lacking sufficient evidence to raise an inference that misconduct has occurred or that a disability exists.” 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** to the extent it concerns Judges _____, _____, _____, _____, _____, _____, _____, _____, and _____.



Acting Chief Judge