

APR 11 2017

David J. Smith
Clerk

CONFIDENTIAL

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

Judicial Complaint No. 11-16-90112

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 September 2014 Complainant filed a pro se employment discrimination lawsuit against his former employer raising various claims. He also filed a motion to proceed in forma pauperis (IFP) and a motion for appointment of counsel. The Subject Judge granted the IFP motion and denied the motion for appointment of counsel. The defendant later filed a motion to dismiss the complaint. In July 2015 the Subject Judge entered an order granting the motion to dismiss, finding that Complainant waived his right to pursue his discrimination claims in the court, his claims were barred by the doctrine of res judicata, certain state law claims were preempted by Title VII, and his defamation claim was not cognizable under the Federal Tort Claims Act.

Complainant then filed two motions for reconsideration and a notice of appeal. In March 2016 the Subject Judge denied the motions for reconsideration, generally finding that he did not establish a basis for reconsideration. Complainant then filed multiple motions seeking various types of relief, including a motion for summary judgment, and the Subject Judge denied those motions without prejudice in light of his pending appeal.

Complaint

In his Complaint of Judicial Misconduct or Disability, Complainant alleges that the Subject Judge violated his “Constitutional Rights to a fair and non prejudicial hearing,” conspired with an Assistant United States Attorney to dismiss his case “on

False Grounds, with Prejudice,” and denied him “the right to speak up to show why [his] case should not be dismissed.” He states, “I firmly believe that [the Subject Judge] dismissed my case either because I am a Middle Eastern White Male and she is prejudice[d], I am Pro-Se and has taken advantage of me because I am Pro-Se, she has been corrupted and joined with the Assistant US Attorney to dismiss my case on false grounds or she is not Competent”

Complainant alleges that the Subject Judge violated multiple Canons of the Code of Conduct for United States Judges. He then generally takes issue with the Subject Judge’s findings and her dismissal of his case and denial of his motions for reconsideration. Complainant requests oral argument “if allowed,” and he attached various documents to his Complaint.¹

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, and orders entered in the case, 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 was prejudiced against him because of his race, gender, or pro se status, was part of a conspiracy, was incompetent, violated the Code of Conduct, 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

¹ Complainant’s request for oral argument is DENIED.

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