

JUL 12 2018

David J. Smith
Clerk

CONFIDENTIAL

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

Judicial Complaint No. 11-18-90027

IN THE MATTER OF A COMPLAINT FILED BY _____

**IN RE: The Complaint of _____ against _____, 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 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”).

Background

The record shows that in March 2016 Complainant filed a 28 U.S.C. § 2254 petition for writ of habeas corpus in which he generally argued that anti-filing injunctions imposed against him in state court violated his constitutional rights. Later that month, the Subject Judge issued a report stating that it appeared Complainant was attacking the constitutionality of his state court conviction and sentence, and recommending that the § 2254 petition be summarily dismissed as an unauthorized successive petition and as time-barred. The Subject Judge also found that, to the extent Complainant argued that the state courts’ orders prohibiting him from filing future pleadings violated his constitutional rights, his claims were meritless. Over Complainant’s objections, the district judge entered an order adopting the report and recommendation and dismissing the § 2254 petition for lack of jurisdiction. This Court clerically dismissed Complainant’s appeal for want of prosecution.

In June 2016 Complainant filed a 28 U.S.C. § 2241 petition for writ of habeas corpus, arguing that the state courts’ anti-filing injunctions violated his constitutional rights. The Subject Judge then issued a report recommending that: (1) the petition be summarily dismissed because Complainant was not entitled to the relief requested; and (2) in the alternative, the petition be dismissed without prejudice to its refiling as a 42 U.S.C. § 1983 action. Over Complainant’s objections, the district judge entered an order adopting the report and recommendation, denying the § 2241 petition, and dismissing the

claims without prejudice to the extent they were properly classified as § 1983 claims. This Court denied Complainant a certificate of appealability because he failed to make a substantial showing of the denial of a constitutional right.

In September 2016 Complainant filed a § 1983 action against four state court judges, arguing that the defendants violated his constitutional rights through the issuance of anti-filing injunctions. The next month, the Subject Judge issued a report recommending that the case be dismissed because it sought damages from defendants who were immune from suit. Over Complainant's objections, the district judge adopted the report and recommendation. This Court dismissed Complainant's appeal as frivolous, holding that the district court properly dismissed his § 1983 complaint because the defendants were immune from a damages suit.

Complaint

In his Complaint of Judicial Misconduct or Disability, Complainant generally takes issue with the reports and recommendations the Subject Judge issued in his cases. He states that his three cases "contained the exact same argument," but the Subject Judge "gave three (3) completely different opinions on the very same subject." With respect to the § 2254 petition, Complainant contends that the Subject Judge "totally ignored" the essence of his argument and "deliver[ed] an opinion that is a contradiction within itself." With respect to his § 2241 petition, he asserts that the Subject Judge gave him "ill-advised and unprofessional advice" about the propriety of filing a § 1983 action. Complainant states, "After reviewing the three (3) different petitions with the same claim, a reasonable Jurist would conclude that [the Subject Judge] expressed a total disregard for the balance of Justice Doctrine. That his actions can be deduced as being intentionally spitefulness, ill will and malevolence toward my petitions." He also notes that he believes his objections to the Subject Judges' reports and were never read or considered.

Complainant states that he "found out through speaking with other inmates that have petitions in the Federal Courts, that they too have had a negative experience with" the Subject Judge. Complainant asserts that it is a "well established fact within the incarcerated community" that the Subject Judge "is anti-inmate" and that "one would not receive a fair and unbiased review of their complaints." Complainant states that an investigation should be conducted into the Subject Judge's actions and opinions involving pro se inmates' cases. He also states that the Subject Judge took advantage of Complainant as a "pro se litigant that has no legal educational background," and should be required to reimburse Complainant of the cost of filing his § 1983 action and appeal. He attached 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 Judge’s official actions, findings, reports, and recommendations in Complainant’s cases, 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 claims that the Subject Judge acted with an illicit or improper motive, is biased against inmates, 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