

FILED
U.S. COURT OF APPEALS
ELEVENTH CIRCUIT

JUL 13 2021

David J. Smith
Clerk

CONFIDENTIAL

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

Judicial Complaint No. 11-21-90043

IN THE MATTER OF A COMPLAINT FILED BY _____

IN RE: The Complaint of _____ against United States Magistrate Judge
_____ of the United States 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”).

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

Background

The record shows that in May 2020 a criminal complaint was filed charging Complainant with making threats against the President of the United States or his successor. At an initial hearing, the Subject Judge appointed counsel to represent Complainant, and counsel moved for a competency and sanity evaluation. In June 2020 the Subject Judge directed that Complainant undergo such an evaluation.

In September 2020, after a hearing, the Subject Judge issued an order finding Complainant mentally incompetent and directing that he be committed to the custody of the Attorney General to be hospitalized for treatment. After that, the government filed a motion arguing in support of an order requiring Complainant to be involuntarily treated to restore his competency. In June 2021 the Subject Judge entered an order granting the motion and directing that a treatment plan be prepared for Complainant that addressed whether involuntary medication might be appropriate.

Complaint

In his Complaint of Judicial Misconduct or Disability, Complainant identifies the above-described case, discusses various matters, and appears to take issue with being placed in the custody of the Attorney General.

Supplement

In his supplemental statement, Complainant states that a witness at his competency hearing committed perjury and that he believes he is “past [his] maximum sentence.”

Discussion

Rule 4(b)(1) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings of the Judicial Conference of the United States, “Allegations Related to the Merits of a Decision or Procedural Ruling,” provides in part that “[c]ognizable misconduct does not include an allegation that calls into question the correctness of a judge’s ruling, including a failure to recuse.” The “Commentary on Rule 4” states in part:

Rule 4(b)(1) 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 authority by ensuring that the complaint procedure is not used to collaterally call into question the substance of a judge’s decision or procedural ruling. Any allegation that calls into question the correctness of an official decision or procedural ruling 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, rulings, and orders in the above-described 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 with which Complainant takes issue, he provides no credible facts or evidence in support of a claim 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**.

/s/ William H. Pryor Jr.

Chief Judge