

FILED
U.S. COURT OF APPEALS
ELEVENTH CIRCUIT

DEC 17 2021

David J. Smith
Clerk

CONFIDENTIAL

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

Judicial Complaint Nos. 11-21-90115 through 11-21-90118

IN THE MATTER OF A COMPLAINT FILED BY _____

IN RE: The Complaint of _____ against United States Magistrate Judge _____ and United States District Judges _____ and _____ of the United States District Court for the _____ District of _____, and United States Circuit Judge _____ 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 Judges _____ and _____, and United States Circuit 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 August 2018 Complainant filed an employment discrimination action against the _____ (“the _____”), and Judge _____ was the assigned magistrate judge (“the First Case”). After various proceedings, in May 2019 Complainant filed a second amended complaint, and the defendant later filed a motion to dismiss. In January 2020 Judge _____ issued an order granting the motion to dismiss and dismissing the claims raised in the second amended complaint with prejudice, finding Complainant failed to state a claim on which relief could be granted.

The record also shows that in October 2020 Complainant filed another employment discrimination action against the _____, and Judge _____ was the assigned magistrate judge (“the Second Case”). After various proceedings, in June 2021 the defendant filed a motion to dismiss the complaint, arguing it was barred by the doctrine of *res judicata* as Complainant raised the same claims that had been dismissed in the First Case and certain claims that had been dismissed in two other previous lawsuits he had filed.

In August 2021 Judge _____ issued an order: (1) dismissing the complaint with prejudice for the reasons stated in the defendant’s motion to dismiss; (2) enjoining Complainant from filing any new action, complaint, or claim for relief against the defendant related to his employment without a member of the Court’s bar signing the paper; (3) stating that any *pro se* papers filed after entry of the order would be stricken and disregarded; and (4) denying his pending motions. Complainant then filed multiple motions, including motions to reopen in which he alleged the case had been dismissed based on a fraudulent misrepresentation by the defendant’s counsel that it was barred by *res judicata*, and the motions to reopen were stricken pursuant to the August 2021 order.

Previous Judicial Complaints

Complainant has filed earlier Complaints of Judicial Misconduct or Disability against Judge _____, Judge _____, and Judge _____. In Complaint Nos. _____ through _____, Complainant alleged Judge _____ and Judge _____ assisted Judge _____ in covering up that that no final judgment issued in the First Case such that the Second Case was not barred by *res judicata*. Judge _____ issued an order dismissing that complaint as merits-related and based on allegations lacking sufficient evidence.

Instant Complaint

In his instant Complaint of Judicial Misconduct or Disability, Complainant alleges counsel for the defendant fraudulently claimed the Second Case was barred by *res judicata*, when counsel knew there was no final judgment on the merits in the First Case. Complainant asserts Judge _____ granted counsel’s fraudulent motion to dismiss even though she knew the case was not barred by *res judicata*, and that Judge _____ and Judge _____ assisted Judge _____ and the attorney in “the cover up” by concealing that no final judgment issued in the First Case.

Next, Complainant alleges Judge _____ dismissed Complaint Nos. _____ through _____ to protect Judge _____ who is his friend. Complainant states that Judge _____ acknowledged that Judge _____ submitted a recommendation on her behalf in connection with “the _____,” which shows that they were friends. Complainant notes Judge _____ dismissed earlier judicial complaints he filed against Judge _____ and Judge _____, and he contends Judge _____ should have recused himself from considering those complaints. He attached documents to his Complaint.

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 Judges’ official actions, findings, rulings, and orders in Complainant’s cases and judicial complaints matters, the allegations are directly related to the merits of the Subject Judges’ decisions or procedural rulings. Complainant’s remaining claims are based on allegations lacking sufficient evidence to raise an inference that Judges _____, _____, or _____ covered up matters, that Judge _____ had a conflict of interest or used his office to obtain special treatment for his friend, or that the Subject Judges 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**



Acting Chief Judge