

FILED
U.S. COURT OF APPEALS
ELEVENTH CIRCUIT
NOV 13 2015
Amy C. Nerenberg
Acting Clerk of Court

CONFIDENTIAL

BEFORE THE CHIEF JUDGE
OF THE ELEVENTH JUDICIAL CIRCUIT

Judicial Complaint Nos. 11-15-90096 and 11-15-90097

IN THE MATTER OF A COMPLAINT FILED BY _____

IN RE: The Complaint of _____ against U.S. District Judges _____ and _____ of 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 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”).

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

Background

The record shows that in December 2000 Complainant filed an employment discrimination action against _____ (_____) and _____. In May 2002 Judge _____ granted summary judgment in favor of _____, but denied summary judgment on the claims against _____. After a trial in November 2003, the jury returned a verdict in favor of Complainant on his retaliation claim against _____. A judgment was entered stating that Complainant would recover from _____ \$ _____ with interest, but the judgment did not provide the interest rate.

After that, _____ filed a motion for judgment as a matter of law, or in the alternative for a new trial or to alter or amend the judgment. Following a hearing, in March 2004 Judge _____ granted _____ motion for judgment as a matter of law, finding that the evidence at trial was insufficient for a reasonable jury to find for Complainant on his retaliation claim. Judge _____ also directed the clerk to vacate the judgment in favor of Complainant and enter a judgment in favor of _____. A new judgment then was entered in favor of _____, and the case was closed. Complainant

appealed, and this Court affirmed the district court's grant of judgment as a matter of law in favor of _____.

In August 2007 Complainant filed a motion for relief from judgment, arguing that _____ and the clerk's office committed fraud by backdating documents to indicate that _____ motion for judgment as a matter of law was timely filed. Judge _____ denied the motion, finding the record clearly and conclusively established that no fraud was perpetrated. Complainant then filed a motion to recuse Judge _____, arguing that he had shown bias against Complainant and in favor of _____, and Judge _____ denied the motion, finding no basis in law or fact for recusal. After that, Complainant filed additional motions seeking relief from the judgment, which Judge _____ denied. Complainant appealed those decisions, and this Court affirmed the denial of his motions. Complainant also filed another motion to recuse Judge _____, which Judge _____ denied. On October 1, 2013, the case was reassigned to a different district judge, and Judge _____ was no longer assigned to the case.

On June 19, 2014, Complainant filed a "Motion for Court to Finalize Judgment for Enforcement of Stipulated Fact Agreement" in which he argued, among other things, that a final judgment was never entered in the case because pre-judgment interest was not added after trial. A few days later, the case was reassigned to Judge _____ as the presiding district judge. On June 26, 2014, Judge _____ denied Complainant's motion, stating that the case was closed, the judgment was final, and this Court had affirmed each ruling. Complainant filed a notice of appeal and moved to proceed in forma pauperis (IFP) on appeal. Judge _____ denied the IFP motion, finding that Complainant's appeal was not taken in good faith and was frivolous within the meaning of 28 U.S.C. § 1915(e)(2)(B). This Court later clerically dismissed the appeal for want of prosecution.

In May 2015 Complainant filed a "Motion to Recuse and Disqualify" Judge _____, generally arguing that he was biased and prejudiced "against Pro Se litigants, against [Complainant] proceeding pro se, or both." Complainant also filed another motion in which he argued that the judgment never became final. In September 2015 Judge _____ issued an order denying the Motion to Recuse and Disqualify, generally finding that Complainant did not establish a basis for recusal, and denying the remaining motion, stating that "further efforts to undermine the Court's entry of judgment in favor of defendant are futile." Complainant filed a motion for reconsideration, which Judge _____ denied.

Complaint

In his Complaint of Judicial Misconduct or Disability, Complainant alleges that Judge _____ engaged in misconduct "by not causing the judgment to become final," and he challenges the finding that his non-finality argument was "frivolous."

Complainant argues that the case never became final after the jury trial because the judgment does not show the correct amount awarded, the prejudgment interest rate, or the date from which prejudgment interest was to accrue. He also argues that the “district court has disregarded the Stipulated Agreement between the parties” He contends that the case presents extraordinary circumstances justifying recall of the mandate.

Supplements

In his first supplemental statement, Complainant contends that Judge _____ engaged in misconduct “by not recusing and disqualifying himself” from the case, asserting that he was required to recuse and disqualify himself due to the appearance of bias and partiality against Complainant. He states, “Judge _____ knowing that he has been called as a witness in my proceedings in this Court appears to influence any successor judge to follow his lead and that it does not matter who is judge the judgment will never become final.” Complainant attached Judge _____ September 2015 order to his first supplemental statement.

In his second supplemental statement, Complainant asserts that Judge _____ continued to engage in misconduct by not recusing and disqualifying himself from the case and has continued to show bias and partiality against Complainant.

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 Judges’ findings and orders entered in the case, the allegations are directly related to the merits of the Subject Judges’ decisions or procedural rulings. Apart from the decisions or procedural ruling that Complainant challenges, he provides no credible facts or evidence

in support of his allegations that Judge _____ was biased or partial or that either of the Subject Judges 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