

APR 11 2017

David J. Smith
Clerk

CONFIDENTIAL

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

Judicial Complaint Nos. 11-17-90001 through 11-17-90004

IN THE MATTER OF A COMPLAINT FILED BY _____

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

Background

The record shows that in April 2015 Complainant filed a lawsuit against a company, raising claims of wrongful termination, discrimination, hostile work environment, and retaliation. The defendant moved to dismiss the complaint on the grounds that Complainant had sued the incorrect entity and failed to properly effect service. In October 2015 Judge _____ granted the motion in part and denied it in part, dismissing the complaint without prejudice, granting Complainant leave to file an amended complaint against the proper defendant, and deeming service effective.

The next month, Complainant filed a first amended complaint against a company. Judge _____ then entered an order directing Complainant to show cause why the case should not be dismissed due to the non-filing of a case management report. Complainant filed a “Motion to Show Cause for Not Filing Case Management Report” in which he described his contacts with the defendant. The next day, Judge _____ denied the motion, directed Complainant to review a local rule and meet with counsel for the defendant, and stated that the case management report must be filed by January 8, 2016. After that, the defendant filed a motion to dismiss the first amended complaint.

On January 12, 2016, Judge _____ entered an order directing Complainant to show cause why the case should not be dismissed due to the non-filing of the case management report. Complainant filed a response arguing that the report had not been

filed because of actions taken by the defendant. Judge _____ then referred the show cause order and response to Judge _____ for disposition. In February 2016 Complainant filed a “Motion to Cure” in which he contended that the court had overlooked certain filings and argued that the defendant had caused the report not to be filed. The defendant filed a response arguing that it had demonstrated its efforts to obtain Complainant’s cooperation and file the case management report.

At a show cause hearing before Judge _____ in early March 2016, the parties discussed their interactions and attempts to meet. At one point, Judge _____ noted that she had reviewed the file and found that the tone of a number of emails from Complainant to counsel for the defendant was “inappropriate, to say the least, on occasion.” Complainant noted that he and defendant’s counsel had exchanged 91 emails, and Judge _____ stated, “It just makes me think even more that you are an exceedingly difficult person to get along with.” After Complainant generally argued that the defendant was the reason the case management report had not been filed, Judge _____ stated that she was “not sympathetic” to his “conspiracy, trying-to-hide-the-ball allegations.” Judge _____ ultimately directed Complainant to file the case management report by the end of the day, and the report was filed that day.

A couple of days later, Complainant filed a second Motion to Cure in which he generally contended that Judge _____ did not treat him fairly at the hearing. Judge _____ entered orders denying Complainant’s Motions to Cure as moot. She also entered an order granting the defendant’s motion to dismiss, generally finding that the first amended complaint failed to state a claim for relief. The order gave Complainant 30 days to file a second amended complaint. In April 2016 Complainant filed a second amended complaint raising various claims against the defendant. He also filed a third Motion to Cure in which he alleged that the court had shown bias against him, and Judge _____ denied the motion. The defendant filed a motion to dismiss the second amended complaint. Complainant filed a “Motion to Show Cause” seeking an order directing the defendant to show cause why it should not be held in contempt for failure to turn over discovery. The case then was reassigned to Judge _____ as the presiding magistrate judge.

On July 5, 2016, Judge _____ granted the defendant’s motion to dismiss, finding that the second amended complaint also failed to state a claim. The order gave Complainant 30 days to file a third amended complaint. On the same day, Judge _____ also entered an order denying the Motion to Show Cause because there was no basis for finding the defendant in contempt of court. That order also: (1) stated that Complainant had “continued to direct outlandish, hostile, and accusatory statements towards the Court and opposing counsel”; (2) directed him to provide within 15 days a list of material he believed was discoverable; (3) set out a streamlined discovery schedule; and (4) stated that, apart from a request to extend certain deadlines, the court would “not consider any discovery-related filing that deviates from this procedure.”

After that, Complainant filed a third amended complaint. He also filed a second Motion to Show Cause and a motion for a hearing, which Judge _____ denied for failure to comply with the court's previous order. Complainant then filed a motion in which he stated that he had not received the court's earlier order, and Judge _____ denied the motion because the court's records showed that the orders were sent to him. The defendant filed a motion to dismiss the third amended complaint. Complainant then filed multiple motions seeking various types of relief, including a motion for appointment of counsel. Judge _____ denied three of the motions, finding that Complainant failed to comply with the procedure set out in the court's July 5, 2016 order and that he did not show that the appointment of counsel was warranted.

In September 2016, Judge _____ entered an order suspending all deadlines pending a ruling on the motion to dismiss. In November 2016 Judge _____ entered an order dismissing the case because the third amended complaint failed to state a claim. The order provided that the dismissal was without prejudice on the condition that Complainant could re-file the action only if he was represented by counsel.

Complaint

In his Complaint of Judicial Misconduct or Disability, Complainant first states that he believes that Judge _____ "removed" Judge _____ "but this was probably a slap on the wrist." He then states that Judge _____ "constantly" ruled against him when his "research says lay people know that Judge _____ was not ruling properly in this case." He states that Judge _____ "participated in ruling against [him] in clear cut lay people know there is bias here." Complainant then alleges that the Subject Judges engaged in "obstruction," did not comply with state statutes, exhibited bias, and violated his due process rights. He states that the Subject Judges should be removed from the bench.

Complainant attached various documents to his Complaint. In one attachment, Complainant generally takes issue with the rulings and orders entered in the case, alleges that the Subject Judges were biased against him and in favor of the defendant, and asserts that the Subject Judges conspired together to deny him relief. He alleges that Judge _____ misrepresented the facts of the case, "suppressed," "manufactured," or ignored evidence, made inconsistent rulings, committed a "crime" against him, and gave arguments to the defendant. He asserts that Judge _____ "suggest[ed] that it is the Plaintiff's 'Angry Black Man Syndrome which he should learn to control that is at issue here.'" He also takes issue with Judge _____ July 5, 2016 "so called" order, stating the "order never happened as the record reflects." Complainant further alleges that Judge _____ exhibited bias and "attacked" him at the show cause hearing.

Complainant contends that he showed that opposing counsel lied, but that the court took no action, which showed bias, obstruction, and collusion. He alleges that the Subject Judges violated multiple canons of the Code of Conduct for United States Judges.

Finally, Complainant states that there was a “Police Wanted Poster” of him at the courthouse providing that he could not walk there without an escort, which showed that the Subject Judges were biased against him and willing to obstruct justice.

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’ official actions, findings, rulings, 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 rulings that Complainant challenges, he provides no credible facts or evidence in support of his allegations that the Subject Judges were biased against him or in favor of the defendant, were part of a conspiracy, obstructed proceedings, “attacked” him, 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