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David J. Smith
Clerk

CONFIDENTIAL

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

Judicial Complaint Nos. 11-17-90029 and 11-17-90030

IN THE MATTER OF A COMPLAINT FILED BY _____

IN RE: The Complaint of _____ against U.S. Magistrate Judge _____
and U.S. District Judge _____ 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 Judge _____ and United States District 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 May 2016 Complainant filed a pro se civil rights complaint raising various claims against multiple defendants. On the complaint form, he indicated that he: (1) had not initiated other actions in state court dealing with the same or similar facts or issues; (2) was “unsure” if he had initiated other actions in federal court dealing with the same or similar facts or issues; (3) was “unsure” if he had initiated other actions in state or federal court related to his incarceration; and (4) was unsure if he had ever had any actions in federal court dismissed as frivolous, malicious, or failing to state a claim. He also filed a motion to proceed in forma pauperis, which Judge _____ granted.

After various proceedings, in December 2016 Judge _____ issued a report recommending that the case be dismissed without prejudice as malicious, pursuant to 28 U.S.C. § 1915(e)(2)(B)(i). The report explained that Complainant had filed multiple previous cases that he should have disclosed on his complaint form and that he failed to justify his failure to disclose those cases. Over Complainant’s objections, in January 2017 Judge _____ entered an order adopting the report and recommendation, dismissing the case without prejudice as malicious, and assessing Complainant a “strike” under 28 U.S.C. § 1915(e). Complainant then filed a motion to alter or amend the

judgment, which Judge _____ denied. He also filed a notice of appeal, and this Court clerically dismissed the appeal for want of prosecution.

Complaint

In his Complaint of Judicial Misconduct or Disability, Complainant generally takes issue with the January 2017 order dismissing his case, and he states that “Judicial Bribery, Bias, Bigotry and General Misconduct are the chief concerns meriting” the filing of his Complaint. Complainant states that “evidence indicates” that the Subject Judges “facilitated their Judicial authority conspiratorially, abusively, biasely, [sic] and maliciously to dismiss [Complainant’s] meritorious petition via the Employing of subterfuge applications of law.”

Complainant also states that “said Judicial officials” have “grossly abuse[d] and misuse[d]” the screening procedures under the Prison Litigation Reform Act to “covertly sabotage, obstruct, and ultimately dismiss” indigent pro se litigants’ meritorious complaints. Complainant then takes issue with the finding that he maliciously abused the judicial system, stating that he merely failed to recall his previously filed cases. Finally, he states he “was obstructed by” this Court “via the non-filing of [his] timely filed Consent form to appropriate filing fee.”

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, report, 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 claims that 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