

FILED
U.S. COURT OF APPEALS
ELEVENTH CIRCUIT

NOV 01 2017

David J. Smith
Clerk

CONFIDENTIAL

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

Judicial Complaint Nos. 11-17-90051 through 11-17-90053

IN THE MATTER OF A COMPLAINT FILED BY _____

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

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 February 2015 Complainant filed a second amended complaint raising various claims against a corporation and other defendants. In April 2015 Judge _____ issued a report recommending that the complaint be dismissed for failure to state a claim on which relief could be granted. Over Complainant’s objections, Judge _____ adopted the report and recommendation and dismissed the second amended complaint. Complainant appealed, and this Court clerically dismissed the appeal for want of prosecution.

The record shows that in February 2016 Complainant filed a lawsuit raising claims against two corporations and other defendants. In June 2016 Judge _____ issued an amended report recommending that the complaint be dismissed as frivolous and for failure to state a claim on which relief could be granted. After that, Complainant filed a “Motion for Leave to Remove Action from Court.” A district judge who is not one of the Subject Judges construed the motion as a motion to voluntarily dismiss the case and granted it.

The record also shows that in September 2016 Complainant filed in state court a lawsuit raising claims against two corporations and other defendants, and in November 2016 the corporate defendants removed the case to federal court. Those defendants then filed a motion to dismiss. In January 2017 Complainant filed a "Motion to Correct Information Notice of Appeal" in which he stated that he did not consent to the case being transferred to federal court. Judge _____ entered an order construing the motion as a motion to remand and denying it as procedurally and substantively deficient.

In March 2017 Judge _____ issued a report recommending that the defendants' motion to dismiss be granted, finding that Complainant failed to state a claim on which relief could be granted. Later that month, Judge _____ entered an order adopting the report and recommendation and dismissing the case. Complainant appealed, and this Court clerically dismissed the appeal for want of prosecution.

Complaint

In his Complaint of Judicial Misconduct or Disability, Complainant alleges that Judge _____ and Judge _____ "filed" the case that was originally filed in state court to protect the corporate defendants from being sued in state court. Complainant also asserts that the court and the defendants "are guilty of breaking many" state statutes and court rules.

In other documents Complainant submitted, he states that Judge _____ and Judge _____ stole his identity and filed a lawsuit in his name to protect a corporate defendant from being sued in state court. He alleges that Judge _____ and Judge _____ conspired to steal his identity and "willfully and purposely with malice" conspired to violate state statutes. Complainant also states that an unidentified magistrate judge ruled against him "without any logical reason except" that the defendant was a corporation.

Supplement

In his supplemental statement, Complainant generally reiterates his allegations about Judge _____ and asserts that Judge _____ is incapable of fairly adjudicating cases.

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, reports, and orders entered in the cases, the allegations are directly related to the merits of the Subject Judges' 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 his allegations that the Subject Judges stole his identity, acted to protect any defendants, were part of a conspiracy, 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