

FILED
U.S. COURT OF APPEALS
ELEVENTH CIRCUIT

SEP 14 2018

David J. Smith
Clerk

CONFIDENTIAL

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

Judicial Complaint Nos. 11-18-90067 and 11-18-90068

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”).

As an initial matter, after Complainant filed his Complaint, he filed a supplemental statement. The filing of the supplemental statements is permitted. See 11th Cir. JCDR 6.7.

Background

The record shows that in May 2015 Complainant filed a notice of removal in connection with a case originally filed against him in state court pertaining to a child custody dispute. The next month, two plaintiffs filed a motion to remand the matter back to state court. In February 2016 Judge _____ issued a report recommending that the motion to remand be granted, generally finding that the action was improperly removed. Over Complainant’s objections, Judge _____ entered an order adopting the report and recommendation and remanding the case to state court. Complainant appealed, and this Court dismissed the appeal for lack of jurisdiction.

In January 2017 Complainant filed a “Petition for Writ of Habeas Corpus, Coram Nobis and/or Judicial Review” in which he generally took issue with certain child custody proceedings in state court, and he moved to proceed in forma pauperis (IFP). In June 2017 Judge _____ issued a report recommending that the case be dismissed for improper venue and lack of jurisdiction, and because Complainant was not entitled to the issuance of a writ of coram nobis. Judge _____ also dismissed Complainant’s IFP

motion as moot, noting that he paid the filing fee. Over Complainant's objections, in July 2017 Judge _____ entered an order adopting the report and recommendation and dismissing Complainant's petition.

Complainant then filed a notice of appeal, a motion to proceed IFP on appeal, and a motion for a certificate of appealability (COA). In September 2017 Judge _____ issued an order: (1) denying the IFP motion because Complainant's appeal was frivolous; and (2) denying the motion for a COA because one could not be issued, and, in any event, because he failed to make the requisite showing. In October 2017 this Court clerically dismissed the appeal for want of prosecution.

In January 2017 Complainant filed a lawsuit against multiple state court judges, raising claims in connection with certain child custody proceedings, and he moved to proceed IFP. In July 2017 Judge _____ issued an order and report: (1) reviewing Complainant's complaint under 28 U.S.C. § 1915(e); (2) denying his IFP motion; (3) recommending that the complaint be dismissed for various reasons; (4) recommending that a request for injunctive relief he made be denied; and (5) recommending that the court deny him leave to appeal IFP. Complainant filed objections to Judge _____ order and report, arguing that his complaint was improperly screened under 28 U.S.C. § 1915 because that statute applies only to prisoners.

In September 2017 Judge _____ adopted the report and recommendation and dismissed the complaint. Complainant filed a notice of appeal, a motion to proceed IFP on appeal, and a motion for a COA. In late September 2017 Judge _____ denied Complainant's IFP motion and denied his COA motion as moot. In June 2018 Complainant's appeal was dismissed for want of prosecution.

Also in September 2017 Complainant filed a complaint against various defendants pursuant to the False Claims Act and a motion to proceed IFP. Judge _____ issued an order and report in which he, among other things: (1) denied the IFP motion; (2) recommended that the complaint be dismissed for improper venue and lack of subject matter jurisdiction; and (3) recommended that Complainant be denied leave to appeal IFP because there were no non-frivolous issues to raise on appeal. Over Complainant's objections, Judge _____ adopted the report and recommendation, dismissed Complainant's complaint, and denied him leave to appeal IFP. After that, Complainant filed motions for a COA and motions for leave to appeal IFP, which Judge _____ denied.

Earlier Complaint

In September 2017 Complainant filed a Complaint of Judicial Misconduct or Disability against the Subject Judges in which he contended, among other things, that they: (1) erroneously remanded one of his cases back to the state court; (2) acted as

“Judicial Advocates and Attorneys, in fact” for parties, attorneys, and judges; and (3) engaged in misconduct by unlawfully screening civil actions filed by non-incarcerated pro se plaintiffs under 28 U.S.C. § 1915. That Complaint was dismissed because it was merits-related and based on allegations lacking sufficient evidence. Complainant did not file a timely petition for review, and that Complaint matter is closed.

Present Complaint

In the present Complaint of Judicial Misconduct or Disability, Complainant complains that the Subject Judges screened his complaints under 28 U.S.C. § 1915, which applies only to prisoners, and he alleges that applying the statute to non-prisoners is unconstitutional and contrary to clearly established federal law. He alleges that the Subject Judges engaged in misconduct “by unlawfully and systematically screening/denying all incoming Civil Actions” filed by indigent non-incarcerated pro se plaintiffs under § 1915.

Complainant contends that the Subject Judges “arbitrarily and capriciously” denied him his right to file an appeal by requiring him to pay the filing fee and erroneously remanded one of his cases back to the state court. He asserts that the Subject Judges acted as “Judicial Advocates and Attorneys, in fact” for parties, attorneys, and judges “covering up literal Fraud, Corruption, [and] Fraud Upon the Court” Finally, he discusses the merits of other cases in which he was involved, and takes issue with the actions of individuals other than the Subject Judges.

Supplement

In his supplemental statement, Complainant alleges that “Judicial Officers in the _____ District of _____” willfully and wantonly harmed him by suspending his driver’s license in retaliation for his lawsuit against a state court judge. He attached various documents to his supplement.

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.

Furthermore, when a complaint repeats allegations of a previously dismissed complaint, it is appropriate to dismiss those repeated allegations and address only allegations that have not previously been considered. See JCDR 11(c)(2).

Complainant's claims that the Subject Judges improperly applied 28 U.S.C. § 1915, erroneously remanded his case, and acted as advocates for individuals have already been considered in connection with his earlier Complaint of Judicial Misconduct or Disability. To the extent Complainant raises allegations that have not previously been considered, his allegations that concern the substance of the Subject Judges' findings, reports, and orders entered in his cases 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 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