

JAN 11 2019

David J. Smith
Clerk

CONFIDENTIAL

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

Judicial Complaint Nos. 11-18-90109 and 11-18-90110

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 August 2013 Complainant filed a civil rights action against various defendants, generally alleging that the defendants violated his constitutional rights. He also filed a motion to proceed in forma pauperis, which Judge _____ later granted. In June 2014 Complainant filed an amended complaint raising various claims against multiple defendants, including claims of excessive force against multiple officers stemming from two incidents. In October 2014 Judge _____ issued a report, finding that Complainant’s: (1) excessive force claims against one named officer and three John Doe officers pertaining to an incident in December 2009 were sufficient to proceed; (2) excessive force claims against other officers pertaining to an incident in November 2010 were sufficient to proceed; and (3) remaining claims should be dismissed for failure to state a claim. The next month, Judge _____ entered an order adopting the report and recommendations.

In April 2015 certain defendants filed a motion to dismiss Complainant’s amended complaint for failure to state a claim. In January 2016 Complainant filed a motion for pro bono representation or referral to a Volunteer Attorney Program, which Judge _____ later granted. Also in January 2016, Judge _____ issued a report recommending that the defendants’ motion to dismiss be denied. A couple of months

later, Judge _____ issued an order adopting Judge _____ report, as supplemented in the order, and denied the defendants' motion to dismiss. The defendants appealed, and this Court later affirmed the denial of their motion to dismiss, holding that the district court did not err in denying the officers qualified immunity.

In September 2017 Judge _____ issued a report recommending that an individual defendant be dismissed for lack of service. Over Complainant's objections, Judge _____ adopted the report and dismissed the defendant, finding in part that Complainant had failed to establish good cause for his inability to locate and serve the defendant. After that, Complainant filed, among other things, a motion for the appointment of counsel, which the Subject Judges denied. Complainant appealed the denial of his motions, and this Court later dismissed the appeal for lack of jurisdiction. After various proceedings, in February 2018 certain defendants filed a motion for summary judgment.

In June 2018 Judge _____ issued a report recommending that Complainant's claims be dismissed as frivolous and that his outstanding motions be denied as moot. With respect to the November 2010 incident, Judge _____ found that: (1) Complainant's claim of excessive force was not supported by the record; (2) he had provided different versions of the events over time; (3) the medical records provided conflicted with his allegations; and (4) video of a bond hearing held after his arrest showed that he had "no signs of the injuries he claims were inflicted upon him." With respect to the December 2009 incident, Judge _____ noted that the named defendant had been dismissed and determined that Complainant had failed to discover the identities of the remaining John Doe defendants within the statute of limitations period.

Over Complainant's objections, Judge _____ entered an order adopting Judge _____ report and recommendation, granting the defendants' motion for summary judgment, dismissing Complainant's amended complaint, and denying all outstanding motions as moot. Complainant appealed, and in August 2018 this Court clerically dismissed the appeal for want of prosecution.

Complaint

In his Complaint of Judicial Misconduct or Disability, Complainant generally alleges that the Subject Judges maliciously denied him his constitutional rights and were not neutral in the case. He asserts that the Subject Judges caused him to "be placed twice in jeopardy by the moving party, due to the state criminal conviction." He then generally takes issue with the finding that his claims were frivolous and with what he characterizes as Judge _____ determination that he did not appear to be in pain in a video recording.

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, recommendations, and orders 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 acted with an illicit or improper motive, were not impartial, 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