

CONFIDENTIAL

BEFORE THE ACTING CHIEF JUDGE
OF THE ELEVENTH JUDICIAL CIRCUIT

Judicial Complaint Nos. 11-18-90115 and 11-18-90116

IN THE MATTER OF A COMPLAINT FILED BY _____

IN RE: The Complaint of _____ against 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 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”).

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

Background

The record shows that in May 2013 Complainant filed in the United States District Court for the _____ District of _____ a civil complaint against _____ (“_____”) and other defendants, raising claims of copyright infringement. In June 2013 Judge _____ issued an order dismissing the complaint without prejudice as an impermissible shotgun pleading and giving Complainant additional time to file an amended complaint. The next month, Judge _____ dismissed the case without prejudice due to Complainant’s failure to file a timely amended complaint.

The record also shows that in June 2013 Complainant filed in the United States District Court for the _____ District of _____ a copyright infringement action against _____ and others, and the case was later transferred to the United States District Court for the _____ District of _____. In October 2014 _____ filed a counterclaim against Complainant for breach of contract, alleging the parties previously had entered into a release agreement in which Complainant agreed not to bring a lawsuit against _____ based on certain claims.

FILED
U.S. COURT OF APPEALS
ELEVENTH CIRCUIT

DEC 21 2018

David J. Smith
Clerk

After additional proceedings, in February 2015 Complainant filed a second amended complaint, raising a claim of rescission of the release agreement and two claims of copyright infringement. The defendants filed a motion to dismiss the second amended complaint. In April 2015 the district court entered an order granting the motion to dismiss, finding that Complainant had not adequately pled a claim of rescission and that his copyright infringement claims were moot. In October 2015 the district court issued a judgment against Complainant and in favor of _____ on the counterclaim. Complainant appealed.

In April 2017 a panel of the United States Court of Appeals for the _____ Circuit held oral argument in Complainant's appeal. The next month, the panel, which included Judge _____ sitting by designation, issued an unpublished opinion affirming the dismissal of Complainant's second amended complaint and affirming the judgment on _____ counterclaim. The panel held in part that Complainant could not rescind the release he entered into with _____ because his delay in providing notice of rescission substantially prejudiced _____. A circuit judge issued a dissenting opinion, stating in part that the majority's conclusion that _____ was substantially prejudiced was premature. Complainant filed a petition for panel rehearing and rehearing en banc, which the panel denied.

Complaint

In his Complaint of Judicial Misconduct or Disability, Complainant states that his Complaint is based on the Subject Judges' and other judges' "recorded 'misconduct' - court corruption and their gross negligence of their professional duties." He states that the Subject Judges and other judges "collectively engaged with gross negligence, having conspired, purposely lying, tricking, maliciously harming and deliberately preventing due process – all done to protect [_____] elaborate court fraud, perjury and corruption." Complainant then alleges that Judge _____ "purposely failed to do his required professional duties," and without communicating with Complainant or his attorney, "trashed" Complainant's "proper filing, thus kicking" him and his case out of the district court.

Complainant then states that "it is public[]ly recorded that the _____ Circuit notably _____ court [sic] has a shortage of judges." He contends that, while his case was before the _____ Circuit, the same _____ district court that "tossed [his] case basically into the trash, . . . incredibly flew in Judge _____ to _____ and he sat in on [Complainant's] case." Complainant asserts that in his cases _____ had judges from two districts over which it had "great power and influence."

Next, Complainant takes issue with the decision issued by the _____ Circuit in his appeal, alleging that Judge _____ and another judge: (1) "openly abused and circumvented required legal policies, skirted professional duties, shunned ethics and

ignored court protocol all with which to deliberately prevent” him from exercising his due process rights; (2) “abused their trusted positions, blatantly conspired with” _____ attorney “by allowing him to do things like not producing required burden of proof documents”; (3) ignored precedent, inappropriately treated Complainant as if he was a corporation, deliberately “obscur[ed]” their “unorthodox ruling,” and deliberately “isolat[ed]” his case to prevent it from setting precedent; and (4) “purposely blocked” his petition for rehearing en banc. He states, “Collectively, all of this is not just injustice, and misconduct, this is total corruption and perversion of our judicial system.” Finally, Complainant raises allegations of misconduct against _____, its attorney, and others.

Supplements

In his supplemental statements, Complainant generally reiterates his allegations and contends that Judge _____ should have recused himself because he went to college with the parent of a “key witness” in the case.

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, rulings, findings, opinion, and orders 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 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 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**.



Acting Chief Judge