

FILED
U.S. COURT OF APPEALS
ELEVENTH CIRCUIT

JAN 11 2019

David J. Smith
Clerk

CONFIDENTIAL

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

Judicial Complaint No. 11-18-90122

IN THE MATTER OF A COMPLAINT FILED BY _____

IN RE: The Complaint of _____ against _____, U.S. District Judge for 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 Judge _____ (the “Subject Judge”), 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 March 2018 Complainant filed a lawsuit against a company and other defendants, raising claims relating to an injury he allegedly received while at the company’s place of business. The next month, the corporate defendant filed a motion to dismiss the case, arguing in part that the court lacked personal jurisdiction, venue was improper, and the claims were barred by the doctrine of res judicata. After that, Complainant filed, among other things, a motion for a hearing, a motion for leave to conduct discovery, and a motion to stay consideration of the motion to dismiss.

In July 2018 the Subject Judge issued an order granting the defendant’s motion to dismiss to the extent it sought dismissal based upon res judicata. The Subject Judge noted that Complainant had filed in the _____ District of _____ a previous suit against the same defendants based on the same nucleus of operative facts, and that court had issued a final judgment dismissing the case. After the Subject Judge issued the dismissal order, Complainant filed an emergency motion to stay the case, asserting that he had been injured in a collision with an 18-wheeler, and the Subject Judge denied that motion. Complainant filed a motion for reconsideration and other relief, a motion to recuse the Subject Judge, and a notice of appeal. This Court later clerically dismissed the appeal for want of prosecution.

Complaint

In his Complaint of Judicial Misconduct or Disability, Complainant alleges that the Subject Judge “wrongfully dismiss[ed]” his case and conspired with judges from the _____ District of _____ “to try and get rid of” his case. He asserts that the Subject Judge “refused” to hold any hearings in the case, “made sure” he would not have an opportunity to conduct discovery, and dismissed the case “to cover up the _____ District of _____ fraud, corruption, and conspiracies.” Complainant also contends that the Subject Judge “ignored the fact that the previous court committed fraud . . . and by doing so she erred and abused not just her discretion but her oath as a judge.” He then generally takes issue with the judge’s actions in the case he filed in _____.

Complainant asserts that the Subject Judge “[u]nquestionably” spoke with the district judge from the _____ District of _____, and “did not decide [Complainant’s] case based on the facts, but on the desires of another judge” He asserts that “it is evident” the Subject Judge conspired with other judges and alleges that she never attempted to obtain responses from the defense. Complainant also takes issue with the Subject Judge’s denial of his request for a continuance.

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 Judge’s official actions, rulings, findings, and orders in the case, the allegations are directly related to the merits of the Subject Judge’s 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 Judge acted to cover up fraud, violated her oath of office, was part of a conspiracy, was 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