

FILED
U.S. COURT OF APPEALS
ELEVENTH CIRCUIT

FEB 20 2019

David J. Smith
Clerk

CONFIDENTIAL

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

Judicial Complaint No. 11-18-90133

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”).

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 July 2018 Complainant filed a prisoner civil rights action against multiple defendants and a motion to proceed in forma pauperis (IFP). After that, he filed, among other things, two amended complaints, a motion for a writ of mandamus, and a motion for injunctive relief. In October 2018 a magistrate judge issued an order and recommendation granting Complainant’s IFP motion, recommending that his motions for a writ of mandamus and for injunctive relief be denied, and directing him to recast his complaint to include all of his claims.

Later that month, Complainant filed a complaint alleging that he was in imminent danger of serious physical injury. The next month, he filed a motion seeking injunctive relief and requesting the appointment of counsel. In December 2018 the Subject Judge issued an order adopting the magistrate judge’s order and recommendation and denying Complainant’s motion for a writ of mandamus and motion for injunctive relief.

Complaint

In his Complaint of Judicial Misconduct or Disability, Complainant states that he filed his Complaint to show an “unlawful plot” by the court to deny him his rights for political reasons, in violation of the “Code of Judicial Conduct” and the Subject Judge’s oath of office. He alleges that the Subject Judge discussed with another judge matters not in evidence and joined in an attempt to keep Complainant from presenting his claims. Complainant asserts that the Subject Judge is not acting expeditiously in the case, which is allowing the defendants to commit unlawful actions. He also discusses other cases and takes issue with the actions of individuals other than the Subject Judge.

Supplements

In his first supplemental statement, Complainant alleges that the Subject Judge failed to act expeditiously in his case, which he asserts shows a deliberate indifference toward Complainant and his safety. He also alleges that the Subject Judge violated her oath of office, which has placed him in imminent danger of serious physical injury. Complainant alleges that the Subject Judge is biased and prejudiced against him due to his refusal to compromise his rights and is part of a conspiracy to deny him his rights. He also takes issue with the actions of another judge.

In his second supplemental statement, Complainant alleges that the Subject Judge denied him “resources of the court” because he is an indigent *pro se* litigant, and he asserts his allegations do not concern the merits of the case. He alleges that the Subject Judge’s actions give the appearance of corruption and that the Subject Judge violated his due process rights and her oath of office. Finally, he asserts the Subject Judge refused to apply a certain Federal Rule of Civil Procedure 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.

In addition, Rule 3(h)(3)(B) provides that cognizable misconduct does not include “an allegation about delay in rendering a decision or ruling, unless the allegation concerns an improper motive in delaying a particular decision or habitual delay in a significant number of unrelated cases.” The “Commentary on Rule 3” provides that “a complaint of delay in a single case is excluded as merits-related. Such an allegation may be said to challenge the correctness of an official action of the judge—in other words, assigning a low priority to deciding the particular case.”

To the extent Complainant's allegations concern the substance of the Subject Judge's official actions, findings, and order 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 with which Complainant takes issue, he provides no credible facts or evidence in support of his allegations that the Subject Judge acted with an illicit or improper motive, conspired to deny him his rights, violated her oath of office, was biased or prejudiced against him, violated the Code of Conduct for United States Judges, 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