

FILED
U.S. COURT OF APPEALS
ELEVENTH CIRCUIT

JUL 08 2019

David J. Smith
Clerk

CONFIDENTIAL

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

Judicial Complaint Nos. 11-18-90152 and 11-18-90153

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 June 2015 Complainant filed a “Petition to Secure Equitable Relief . . .” against various defendants, raising claims arising out of his state court criminal proceedings and incarceration, and the case was docketed as a civil rights action under 42 U.S.C. § 1983. He also filed a request for judicial notice and declaratory and injunctive relief, as well as a motion to proceed *in forma pauperis* (IFP). Later in June 2015 Judge _____ entered an order denying the IFP motion and dismissing the case without prejudice under the “three strikes” provision in 28 U.S.C. § 1915(g). After that, Complainant filed a motion to disqualify the Subject Judges and a request for equitable and other relief, and Judge _____ denied the motions. Complainant appealed, and this Court later clerically dismissed the appeal for want of prosecution.

The record shows that in December 2017 Complainant filed a petition that was docketed as a 28 U.S.C. § 2254 petition for writ of habeas corpus in which he: (1) alleged that his access to _____ courts had been obstructed by the concerted effort of various individuals to conceal the state’s “class legislations” under a certain state statute; (2) requested that the court take judicial notice of certain matters; and (3) challenged his state court convictions on various grounds. The petition was transferred to the United States District Court for the _____ District of _____ after initially being filed in a different court, and Complainant filed motions to proceed IFP. Judge _____

issued an order denying Complainant's IFP motions and directing him to recast his petition on the court's standard form.

After that, Complainant filed: (1) a notice in which he alleged the Subject Judges were biased against him and participated in a concerted effort to commit fraud against him; (2) objections to Judge _____ order; and (3) a document challenging the court's exercise of jurisdiction. In March 2018 Judge _____ entered an order directing Complainant to amend his petition to include all of his claims for relief. Complainant appealed, but later voluntarily dismissed the appeal. In April 2018 Complainant filed an amended habeas petition, a motion to recuse Judge _____, and an objection to Judge _____ previous order. He later filed, among other things, a request for the court to take judicial notice and a request for injunctive and declaratory relief.

In December 2018 Judge _____ issued an order denying Complainant's motion to recuse, generally finding that the grounds for recusal were without merit. Judge _____ also issued a report recommending that Complainant's § 2254 petition be denied and his motion for injunctive and declaratory relief be denied as moot. Judge _____ found that Complainant's grounds for relief were procedurally defaulted or failed to state a claim. Complainant filed objections to Judge _____ order and report.

The record also shows that in August 2018 Complainant filed a § 2254 habeas petition alleging that his rights to "parole considerations" had been unconstitutionally denied, and he filed a request for the court to take judicial notice of certain state laws. He then filed a motion to recuse the Subject Judges, alleging in part that they had a financial interest in the outcome of his case. In October 2018 Judge _____ issued an order denying the motion to recuse and directing Complainant to either pay the filing fee or move to proceed IFP. Complainant filed an objection to the order and an IFP motion. In November 2018 Judge _____ issued an order granting the IFP motion and directing Complainant to amend his petition to include all claims. The next month, Complainant filed an amended § 2254 petition. After that, the respondent filed an answer and a motion to dismiss the amended petition.

Complaint

In his Complaint of Judicial Misconduct or Disability, Complainant alleges that the Subject Judges engaged in misconduct when they "fail[ed] to acknowledge, adjudicate, and-or apply _____ class legislations" in his cases. Complainant states that he asked the Subject Judges to "take mandatory judicial notice" of the state's "class legislations" in order to make a preliminary determination about whether his state court conviction was lawful, but they failed to do so.

Complainant states that he filed a “UCC Financing Statement” against Judge _____ due to his and “concerting public officials’ misconduct, breach of duties, and tortious acts.” Complainant asserts that: (1) Judge _____ and another individual “fraudulently attempt[ed] to create the illusion” that the lien was lifted or voided by initiating an action in state court; (2) the “prosecution of said matter was with a coconspirator against” Complainant; and (3) “these tyrants used their color of authority to have the clerk deprive” Complainant of a fee.

He alleges that the Subject Judges “and their coconspirators make sure that [his] claims are not adjudicated by an impartial mediator or impartial and informed persons-jurors . . . ,” and that certain cases were “fraudulently delayed.” In conclusion, Complainant asserts that the Subject Judges: (1) have an “actual bias and prejudice against [him] due to their violations of their obligations to _____ class legislations” under a state statute; and (2) have an “obvious individual and financial interest in the outcome of” his cases. He attached various documents to his Complaint.

Discussion

Rule 4(b)(1) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings of the Judicial Conference of the United States, “Allegations Related to the Merits of a Decision or Procedural Ruling,” provides in part that “[c]ognizable misconduct does not include an allegation that calls into question the correctness of a judge’s ruling, including a failure to recuse.” The “Commentary on Rule 4” states in part:

Rule 4(b)(1) 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 authority by ensuring that the complaint procedure is not used to collaterally call into question the substance of a judge’s decision or procedural ruling. Any allegation that calls into question the correctness of an official decision or procedural ruling 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, report, recommendations, and orders in his cases, the allegations 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 were part of a conspiracy, acted with an illicit or improper motive, were not impartial, were biased or prejudiced against him, had a financial interest in the outcome of his cases, 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