

CONFIDENTIAL

FILED
U.S. COURT OF APPEALS
ELEVENTH CIRCUIT

MAY 24 2019

David J. Smith
Clerk

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

Judicial Complaint No. 11-18-90167

IN THE MATTER OF A COMPLAINT FILED BY _____

IN RE: The Complaint of _____ against _____, U.S. Circuit Judge for the U.S. Court of Appeals for the _____ Circuit, 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 Circuit 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 a bank filed a lawsuit against Complainant, and in February 2015 she removed the case to federal court and filed a counterclaim against the bank. The next month, the district court entered an order remanding the case to state court, finding that it lacked subject matter jurisdiction. Complainant then filed a motion for relief from judgment, which the district court denied. Complainant appealed.

In January 2016 a panel of this Court that included the Subject Judge affirmed the order denying Complainant’s motion for relief from judgment. Complainant filed a motion for reconsideration in which she alleged fraud had been committed, and the Subject Judge entered an order construing the filing as a motion to recall the mandate and denying it. Complainant then submitted an additional filing raising claims of fraud, which the panel construed as a motion for reconsideration and denied.

After that, Complainant submitted other documents alleging that fraud had been committed. In April 2018 the Subject Judge issued an order finding that Complainant’s submissions were duplicative, frivolous, and sought relief that was not available. The order directed the clerk to accept no further filings from Complainant in the case except a single motion for reconsideration and to discard any future submissions. Complainant filed a motion for reconsideration, and a panel that included the Subject Judge denied the motion.

Complaint

In her Complaint of Judicial Misconduct or Disability, Complainant first asserts that she was the victim of fraud committed by a bank and its attorney. She then alleges that the Subject Judge “abused his power” by signing an order directing the clerk to throw all of her filings “in the trash” and not to file them on the docket “to hide the fraud.” She states the Subject Judge’s order “was an open interpretation of conspiracy to commit fraud” and violated her constitutional rights. She attached documents to her 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 Judge’s official actions, findings, opinion, and orders in Complainant’s appeal, 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, she provides no credible facts or evidence in support of her claims that the Subject Judge 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