

JUL 09 2019

David J. Smith
Clerk

CONFIDENTIAL

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

Judicial Complaint No. 11-18-90172

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

Documents Complainant provided show that in 1982 he filed an employment discrimination lawsuit against two companies. In 1986 the district court dismissed the case because Complainant failed to provide proof that he tendered the money he received as consideration for a release he had entered into with the defendants, and a judgment was entered dismissing the case “on the merits.” In August 1986 a panel of this Court that included the Subject Judge affirmed the district court without opinion.

Complainant later filed in the district court a motion to correct the judgment, and in 1991 the district court entered an order granting the motion and directing the clerk to reenter the judgment dismissing the action “without prejudice.” In 2015 Complainant filed in this Court a motion to recall the mandate and a request to submit the motion to the en banc court, raising various arguments. In October 2015 the Subject Judge issued an order that, among other things, denied the motion to recall the mandate and the motion for en banc consideration. Complainant then filed a “Petition for Hearing En Banc,” and in January 2016 a two-judge panel that included the Subject Judge issued an order construing the petition as a motion for reconsideration and denying it.

Complaint

In his Complaint of Judicial Misconduct or Disability, Complainant takes issue with the Subject Judge’s orders denying his motions to recall the mandate and for en banc

consideration. He asserts that the Subject Judge entered the October 2015 order “all be himself” despite that the Federal Rules of Appellate Procedure required review by a panel of active judges, and that he was “a disqualified judge . . . and as such lacked legal authority to rule on an important issue on his own.” Complainant also asserts that this Court “had absolutely no jurisdiction to begin with to accept the case in the first place in 1986 but for the fraud committed by” the district court clerk and counsel for the defendants, and he states that the Subject Judge was one of the panel members who “accepted jurisdiction in error.”

Next, Complainant alleges that the Subject Judge improperly characterized his second motion to recall the mandate as a motion for reconsideration. Finally, he alleges the Subject Judge “usurped his authority to handle a matter” that should have been decided by a panel of active judges or by the full court, and that he allowed Complainant’s claims “to end which is a manifest injustice.” Complainant also raises allegations against individuals other than the Subject Judge.

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, rulings, decisions, 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 with which Complainant takes issue, he provides no credible facts or evidence in support of his 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**.



Acting Chief Judge