

FILED
U.S. COURT OF APPEALS
ELEVENTH CIRCUIT

MAY 24 2019

David J. Smith
Clerk

CONFIDENTIAL

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

Judicial Complaint No. 11-18-90175

IN THE MATTER OF A COMPLAINT FILED BY _____

IN RE: The Complaint of _____ against _____, U.S. Magistrate 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 Magistrate 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 September 2018 Complainant filed a civil complaint against a health care company alleging, among other things, that he had been falsely imprisoned and tortured, and he also filed a motion for leave to proceed in forma pauperis (IFP). Later in September 2018, the Subject Judge issued a report recommending that Complainant’s IFP motion be denied and his complaint be dismissed, finding the complaint was frivolous and did not comply with Fed. R. Civ. P. 8. The Subject Judge stated the complaint was “nonsensical” and “best characterized as a rambling diatribe” and that the allegations in the complaint were “fanciful, fantastic, and delusional.” In November 2018 the district judge entered an order adopting the Subject Judge’s report and recommendation, denying Complainant’s IFP motion, and dismissing the case without prejudice.

Complaint

In his Complaint of Judicial Misconduct or Disability, Complainant alleges the Subject Judge violated the Code of Conduct for United States Judges in various respects, and he takes issue with the Subject Judge’s report, which he asserts contained “inflammatory, hostile rhetoric.” He alleges the Subject Judge “advocated for the dismissal based upon his personal views” and “advocated his personal religious views as a basis for justifying” his report. Complainant asserts that the Subject Judge improperly

made public comments on the merits of a pending or impending matter and that his statements “constitute extreme impropriety and the appearance of impropriety.” He contends that the Subject Judge’s integrity, impartiality, temperament, and fitness to serve as a judge are “impaired.”

Next, Complainant asserts that the Subject Judge: (1) “repudiated . . . constitutional principles of equality” and “principles of federal constitutional law”; (2) “expressed and exhibited bias and lack of impartiality” in cases where he has a potential conflict of interest; and (3) was disrespectful toward Complainant and “showed a very troubling lack of judicial temperament.” Complainant contends that, due to the Subject Judge’s statements, “persons who are ‘mentally disturbed,’ cannot reasonably expect ‘fairness’ or ‘impartiality’” from him, and that he is not impartial in “cases involving mental health care fraud and sexual Perversion.” Finally, Complainant asserts the Subject Judge obstructed justice and committed misprision of felony and libel. He attached documents to his Complaint.

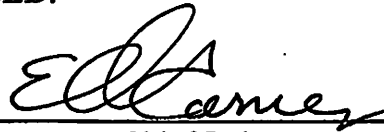
Discussion

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 Judge’s official actions, findings, report, and recommendations 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 violated the Code of Conduct for United States Judges, was biased and lacked impartiality, treated Complainant in a demonstrably egregious and hostile manner, 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