

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. 11-18-90176

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 October 2018 Complainant filed a civil complaint against a company, and the next day, the Subject Judge entered an order directing Complainant to either pay the filing fee or file a motion to proceed in forma pauperis (IFP) within a certain time. In November 2018 Complainant filed a “Motion to Review Order” in which he requested the Subject Judge consider a previous IFP motion he had filed in another case. A couple of days later, the district judge dismissed the case without prejudice due to Complainant’s failure to pay the filing fee or file an IFP motion in the case. Later in November 2018, Complainant filed an IFP motion, and the Subject Judge denied the motion because the case was closed.

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 alleges the Subject Judge “unlawfully” closed the case and used “inflammatory, hostile rhetoric.” Complainant states the Subject Judge “advocated for the dismissal based upon his personal views” and that his closing of the case constituted “extreme impropriety and the appearance of impropriety.” Complainant asserts that the Subject Judge improperly made public comments on the merits of a pending or impending matter,

and he contends that the Subject Judge's integrity, impartiality, temperament, and fitness to serve as a judge are "impaired."

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 and ability to execute justice." 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 and street design perversion." Finally, Complainant asserts the Subject Judge obstructed justice, committed misprision of felony and libel, and "apparently conspire[s]" with another judge. 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, and orders 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 or lacked impartiality, treated Complainant in a demonstrably egregious and hostile manner, was part of a conspiracy, 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