

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. 11-19-90001 and 11-19-90002

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”).

As an initial matter, after Complainant filed his Complaint, he filed two supplemental statements. The filing of the supplemental statements is permitted. See 11th Cir. JCDR 6.7.

Background

The record shows that in March 2018 Complainant filed a lawsuit against two companies and a motion to proceed in forma pauperis (IFP). Judge _____ an order referring the case to Judge _____ for all pretrial non-dispositive matters and an order granting the IFP motion. In May 2018 the defendants filed motions to dismiss the complaint. After that, Complainant filed multiple notices and motions requesting various types of relief, including a motion seeking the dismissal of the defendants’ attorneys.

In November 2018 one defendant filed a Notice of Hearing stating that a hearing had been set before Judge _____ pertaining to a discovery dispute, and Complainant filed a motion to dismiss the Notice of Hearing in which he argued that Judge _____ was not assigned to the case. Judge _____ denied Complainant’s motion to dismiss, noting that all non-dispositive pretrial matters had been referred to him and stating that Complainant was not excused from the hearing.

After that, Judge _____ entered an order noting that Complainant failed to attend the hearing, directing him to respond to the defendant's discovery requests, and requiring him to pay the defendant's attorney's fees incurred in litigating the discovery dispute. Complainant filed a motion in which he again argued that Judge _____ was not assigned to the case and a motion seeking Judge _____ recusal. In December 2018 Judge _____ entered an order scheduling a hearing to determine a date and time for a hearing regarding Complainant's continued failure to comply with discovery requests.

Complainant filed various motions, including one stating that he would be on vacation at the time of the scheduled hearing. Judge _____ entered an order interpreting that as a motion to continue the hearing, denying it, and directing Complainant to call in to the hearing if he was on vacation at the time. In mid-December 2018 Judge _____ entered an order noting that Complainant failed to appear or call in to the hearing and directing him to appear in January 2019 to show cause why he had not provided discovery responses and why he failed to attend or call in to the two previous hearings.

After various additional proceedings, in late January 2019 Judge _____ entered an order noting that Complainant failed to attend the show cause hearing despite receiving advance notice of it. In February 2019 Judge _____ issued a report recommending that the case be dismissed with prejudice and that all of Complainant's pending motions be denied as moot due to his bad faith failure to comply with court orders. Over Complainant's objections, Judge _____ adopted the report and recommendation and dismissed the case with prejudice.

Complaint

In his Complaint of Judicial Misconduct or Disability, Complainant alleges that Judge _____ "disregarded responding to any of" his motions and exhibited "extreme prejudice" in the case. He states that Judge _____ "ordered the intervention" of Judge _____ in violation of a consent form Complainant submitted "just for the fact that is serving [sic] as a ProSe and of a Latin background." He complains that Judge _____ did not respond to his motions and asserts that Judge _____ "disregarded all Judicial regulations." Complainant also states that Judge _____ "allowed" Judge _____ "to act on his unprofessional reactions by the running off of the Mouth in writing." Finally, Complainant asserts that Judge _____ made disrespectful comments and exhibited "extreme prejudice" towards him.

Supplements

In his first supplemental statement, Complainant reiterates his allegations and contends that Judge _____ has continued to be illegally involved in the case. He

asserts that Judge _____ violated his oath of office and made false statements in his January 2019 order, that Judge _____ allowed Judge _____ to violate laws and rules, and that the Subject Judges engaged in fraud. He attached documents to his first supplement.

In his second supplement, Complainant alleges that Judge _____ exhibited “incompetency” and “extreme prejudice,” and failed to respond to any motions in his and another case. Complainant also states that: (1) Judge _____ “has written a mass of confusion in the final document” in another case; (2) the document “intergrades several time frames and issues” which caused Complainant to be “concerned with her mental condition”; and (3) the document is “a clear caption of someone who is seemingly experiencing dementia.”¹ He attached various documents to his second supplement.

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, findings, report, recommendations, and orders in the 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 claims that Judge _____ suffers from a disability or that the Subject Judges exhibited prejudice, treated Complainant in a demonstrably egregious and hostile manner, made false statements, engaged in fraud, or otherwise engaged in misconduct.

¹ Complainant appears to take issue with Judge _____ March 2019 order denying a “Motion to _____.” That motion was denied for failure to state a claim on which relief may be granted.

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**.

A handwritten signature in black ink, appearing to read "E. A. James", written in a cursive style.

Chief Judge