

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. 11-19-90003

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 December 2018 Complainant filed a lawsuit against a company and its owner, as well as a motion to proceed in forma pauperis (IFP). The next month, the Subject Judge issued a report recommending that the IFP motion be denied and the case be dismissed, finding the complaint failed to state a claim and the action was frivolous because the allegations were “fanciful, fantastic, and delusional.” After that, Complainant filed an amended complaint and multiple supplements. In February 2019 the district judge adopted the Subject Judge’s report and recommendation, denied Complainant’s IFP motion, and dismissed the case with 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 that the Subject Judge “unlawfully” recommended that the case be dismissed and used “inflammatory, hostile rhetoric.” Complainant states the Subject Judge “advocated for the dismissal based upon his personal views” and that his recommendation to dismiss 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”; 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 Google earth images.” Finally, Complainant asserts the Subject Judge obstructed justice, committed misprision of felony and libel, and “apparently conspire[s]” with other judges. 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 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**.

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

Chief Judge