

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. 11-19-90012 through 11-19-90014

IN THE MATTER OF A COMPLAINT FILED BY _____

**IN RE: The Complaint of _____ against U.S. District Judge _____ of the
U.S. District Court for the _____ District of _____ and U.S. Circuit
Judges _____ and _____ of 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 District Judge _____ and United States Circuit Judges _____ and _____ (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”).

Background

The record shows that in May 2017 Complainant filed a civil rights complaint against multiple defendants, and he moved for leave to proceed in forma pauperis (IFP). After that, a magistrate judge granted the IFP motion and directed Complainant to file an amended complaint. In August 2017 Complainant filed a motion to dismiss the case without prejudice and to be relieved of the obligation to pay the filing fee. In October 2017 Judge _____ entered an order granting Complainant’s motion to voluntarily dismiss the case and denying the request to be relieved of paying the remainder of the filing fee, and a judgment was entered the next day.

Complainant filed a motion for relief from judgment, seeking to reopen the case in a different court, and filed a notice of appeal. In January 2018 Judge _____ entered an order denying the motion for relief from judgment, finding that Complainant failed to demonstrate grounds for the court to disturb the judgment and that it would be futile for the court to reopen and/or transfer the case. The next month, Complainant filed in the district court a “Petition for En Banc Rehearing” seeking review of Judge _____ January 2018 order. A few months later, Judge _____ entered an order carrying the petition with the case pending resolution of Complainant’s appeal.

In September 2018 a panel of this Court composed of Judges _____ and _____ remanded the case to the district court for the limited purpose of allowing it to address the Petition for En Banc Rehearing. The next month, Judge _____ entered an order denying Complainant's Petition for En Banc Rehearing, finding there was no provision for en banc rehearing in the district court and that, to the extent Complainant sought reconsideration of the January 2018 order, he raised no new arguments or evidence warranting reconsideration. After that, Complainant filed multiple motions seeking various types of relief, including a motion to amend his filings, and Judge _____ denied the motions. In May 2019 a panel of this Court that included Judges _____ and _____ dismissed Complainant's appeal as frivolous.

Complaint

In his Complaint of Judicial Misconduct or Disability, Complainant takes issue with Judge _____ order denying his Petition for En Banc Rehearing and this Court's order remanding the matter to the district court. He asserts that the Subject Judges "had to have known that the appropriate court for handling and jurisdiction was" the circuit court, and that their "handling of the petition only frustrated the court system and prejudiced" his case. Complainant states that his petition should have been forwarded to the circuit court or returned unfiled.

Complainant also contends that the district court abused its discretion by not providing him an opportunity to amend his filing and that the denial of his motion to amend and motion to reopen were biased. In an attached document, Complainant alleges that Judge _____ "attempted to manipulate the proceeding" by dismissing his Petition for En Banc Rehearing, which he had erroneously filed in the district court.

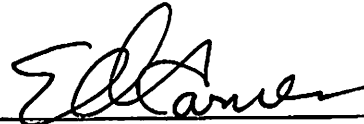
Discussion

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, rulings, findings, and orders in Complainant's case and appeal, 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 _____ was biased against him or that the Subject Judges otherwise engaged in any 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