

FILED
U.S. COURT OF APPEALS
ELEVENTH CIRCUIT

SEP 05 2019

David J. Smith
Clerk

CONFIDENTIAL

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

Judicial Complaint Nos. 11-19-90019 thru 11-19-90026

IN THE MATTER OF A COMPLAINT FILED BY _____

IN RE: The Complaint of _____ against former United States District Judge _____ of the United States District Court for the _____ District of _____,¹ former United States Magistrate Judge _____ and United States District Judge _____ of the United States District Court for the _____ District of _____, and United States Circuit Judges _____, _____, _____, and _____ of the United States 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 former United States District Judge _____, former United States Magistrate Judge _____, 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”). Judge _____ retired in _____, and Judge _____ retired in _____.

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

Background

The record shows that in July 2007 an insurance company filed an “Amended Complaint for Declaratory Judgment” in the United States District Court for the _____ District of _____, requesting that the court declare that it had paid Complainant a certain amount under an insurance policy for damage to his boat and that

¹ The allegations against Judge _____ concern his conduct while sitting in the circuit by designation. See Rule 7(b) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings of the Judicial Conference of the United States.

it had no other obligations to him. Complainant filed an answer and asserted a counterclaim against the insurance company for bad faith.

After various proceedings, in 2009 the case was assigned to Judge _____ as a visiting judge. Following a trial before Judge _____, the jury found the insurance company acted in bad faith and that Complainant was entitled to compensatory damages. Judge _____ later found that Complainant was entitled to certain prejudgment interest and reasonable attorneys' fees and costs. A third amended final judgment was entered in April 2010.

The record also shows that Complainant later filed in state court a lawsuit against a different insurance company, and in June 2015 the defendant removed the case to federal court. In October 2015 Complainant filed an amended complaint raising multiple claims, and the defendant moved to strike or dismiss the amended complaint the next month. In February 2016 Judge _____ issued an order dismissing the amended complaint without prejudice for failure to comply with the court's local rules and the Federal Rules of Civil Procedure.

After that, Complainant filed a second amended complaint raising various claims, and the defendant filed a motion to dismiss. In June 2016 Judge _____ dismissed the second amended complaint with prejudice due to Complainant's failure to comply with local and federal rules, and she directed that the case be closed. Complainant filed motions to reopen the case and third amended complaints, and Judge _____ denied the motions to reopen and ordered the third amended complaints stricken. Complainant appealed. After that, Complainant filed in the district court additional motions seeking various types of relief, which Judge _____ or Judge _____ denied.

In December 2016 this Court clerically dismissed Complainant's appeal for want of prosecution. Complainant filed a motion to reinstate the appeal and a motion for extension, and in October 2017 a two-judge panel composed of Judges _____ and _____ denied the motions. Complainant filed a motion for reconsideration, and in December 2017 the two-judge panel granted the motion and provided Complainant with 14 days to file an appendix. After that, Complainant filed a motion for appointment of counsel, and Judge _____ issued an order denying the motion because Complainant did not demonstrate he was unable to afford an attorney. In October 2018 a panel composed of Judges _____, _____, and _____ affirmed the district court's denial of Complainant's post-judgment motions and the order striking his third amended complaints. The Court stated that although it had liberally construed Complainant's pro se brief, it could not discern any argument as to why the district court erred.

Complaint

In his Complaint of Judicial Misconduct or Disability, Complainant appears to take issue with the Subject Judges' orders and opinion in his cases and appeal, and he appears to allege that the Subject Judges engaged in fraud. He attached various documents to his Complaint.

Supplements

In his first supplemental statement, Complainant appears to request the appointment of counsel due to his disability. In the second, he appears to allege that certain Subject Judges engaged in fraud. Complainant's third supplement is made up of various documents. In the fourth, fifth, sixth, and seventh supplements, Complainant again appears to request the appointment of counsel, takes issue with various matters, and attached documents to the supplements.²

Discussion

Judge _____ and Judge _____

Rule 11(e) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings of the Judicial Conference of the United States provides, "The chief judge may conclude a complaint proceeding in whole or in part upon determining that intervening events render some or all of the allegations moot or make remedial action impossible as to the subject judge." With respect to this rule, the "Commentary on Rule 11" states in part, "Rule 11(e) implements Section 352(b)(2) of the Act, which permits the chief judge to 'conclude the proceeding,' if 'action on the complaint is no longer necessary because of intervening events,' such as a resignation from judicial office."

To the extent the Complaint concerns Judges _____ and _____, in light of their retirements, "intervening events render some or all of the allegations moot or make remedial action impossible," JCDR 11(e). For this reason, pursuant to Chapter 16 of Title 28 U.S.C. § 352(b)(2) and Rule 11(e) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings of the Judicial Conference of the United States, this Complaint proceeding is **CONCLUDED** to the extent it concerns Judges _____ and _____. The conclusion of this proceeding in no way implies that there is any merit to Complainant's allegations against Judges _____ and _____.

² Complainant's requests for the appointment of counsel are DENIED.

The Remaining Subject Judges

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.

Complainant's allegations against Judges _____, _____, _____, _____, _____, and _____ concern the substance of their official actions, findings, orders, and opinion in Complainant's cases and appeal, and the allegations are directly related to the merits of those judges' decisions or procedural rulings. Apart from the decisions or procedural rulings with which Complainant appears to take issue, he provides no credible facts or evidence in support of his claims that those Subject Judges engaged in fraud or otherwise engaged in misconduct.

Therefore, to the extent the Complaint concerns Judges _____, _____, _____, _____, _____, and _____, 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** to the extent it concerns Judges _____, _____, _____, _____, _____, and _____.



Chief Judge