

FILED
U.S. COURT OF APPEALS
ELEVENTH CIRCUIT

AUG 08 2019

David J. Smith
Clerk

CONFIDENTIAL

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

Judicial Complaint No. 11-19-90029

IN THE MATTER OF A COMPLAINT FILED BY _____

IN RE: The Complaint of _____ against _____, United States District Judge for the United States 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 District 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 January 2019 Complainant and another individual filed a civil rights action against multiple defendants, including certain state court judges, alleging in part that a state court foreclosure judgment was procured by fraud. The next month, Complainant filed a motion for change of venue, the document was restricted on the docket “due to error,” and the correct document was attached to a different docket entry. In the motion, Complainant argued that the Subject Judge was married to a state court judge and a “reasonable person would believe it would be putting [the Subject Judge] at a difficult position to go against the judicial peers” of his wife.

Later in February 2019 the Subject Judge entered an order: (1) dismissing without prejudice multiple claims for lack of subject matter jurisdiction, finding that they were barred by the Rooker-Feldman doctrine; (2) dismissing with prejudice the remaining claims as frivolous; and (3) denying all pending motions as moot. Complainant filed a motion to set aside the order, arguing, among other things, that exceptions to the Rooker-Feldman doctrine applied. He also filed a motion to recuse the Subject Judge, alleging that he was biased and prejudiced against Complainant, had a conflict of interest due to his marriage to a state court judge, and “Blacked Out” Complainant’s motion for change of venue to hide his conflict.

In March 2019 the Subject Judge issued an order denying the motion to set aside and motion to recuse, generally finding that Complainant had not established that he was entitled to the relief sought. The order also granted a Fed. R. Civ. P. 60 motion filed by a defendant and remanded the case to the state court. The Subject Judge found that Complainant had in fact removed the case even though the docket sheet did not reflect that fact. The Subject Judge also found that the complaint that was “filed in federal court post-removal in the state foreclosure proceeding to which [Complainant] was defendant, is a counterclaim and cannot serve as a basis for federal jurisdiction.”

Complaint

In his Complaint of Judicial Misconduct or Disability, Complainant alleges the Subject Judge is biased and prejudiced, engaged in criminal conduct to dismiss Complainant’s case “on false grounds,” and disrespected Complainant and his lawsuit. Complainant specifically takes issue with the Subject Judge’s determination that the Rooker-Feldman doctrine applied in the case.

Complainant asserts that the Subject Judge is married to a state court judge, and that a “reasonable person would believe that it would be putting [the Subject Judge] at a difficult position to go against the judicial peers” of his wife. Complainant contends that the Subject Judge should have recused himself from the case “due to the Conflict between himself, his wife and her peers.” Complainant asserts that the Subject Judge “was going to protect these judges and would be a hero to his wife and her peers.”

Complainant complains that the Subject Judge had his motion for change of venue “Blacked Out, to hide this Conflict between he, his wife and her peers.” He alleges that the Subject Judge violated two canons of the Code of Conduct for United States Judges. Complainant also takes issue with the actions of individuals other than the Subject 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, rulings, and orders in the case, including his failure to recuse, the allegations are directly related to the merits of the Subject Judge's decisions or procedural rulings. Complainant's remaining claims are based on allegations lacking sufficient evidence to raise an inference that the Subject Judge was biased or prejudiced, engaged in criminal conduct, treated Complainant in a demonstrably egregious and hostile manner, had a conflict of interest, violated the Code of Conduct for United States Judges, 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