

CONFIDENTIAL

FILED
U.S. COURT OF APPEALS
ELEVENTH CIRCUIT

OCT 28 2019

David J. Smith
Clerk

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

Judicial Complaint No. 11-19-90060

IN THE MATTER OF A COMPLAINT FILED BY _____

IN RE: The Complaint of _____ against United States District Judge
_____ of 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 February 2018 Complainant filed a “Miscellaneous Action Request for Hearing on Disorderly Conduct Charge and Penalty under 38 CFR 1.218” in which he sought a hearing to challenge a disorderly conduct charge “placed on” him by the Department of Veterans Affairs and a decision to ban him from a healthcare facility. The case was assigned a miscellaneous case number.

Later in February 2018, the Subject Judge entered an order stating that Complainant had sued the Secretary of the Department of Veterans Affairs, directing the clerk to assign the case a civil case number, and requiring Complainant to pay the filing fee or move to proceed in forma pauperis (IFP). In May 2019 in the miscellaneous case, Complainant filed another request for a hearing, and the next month the Subject Judge issued an order denying the request because the case had been closed and he was able to seek relief in two related civil cases.

Meanwhile, in February 2018 Complainant’s initial “Miscellaneous Action Request for Hearing . . .” was docketed as a civil rights complaint against _____. Complainant filed a response stating that he did not intend to file a lawsuit and that he should not be required to pay the filing fee. The Subject Judge issued an order directing Complainant to pay the filing fee or move to proceed IFP.

In mid-March 2018 the Subject Judge entered an order dismissing the case without prejudice due to Complainant's failure to pay the filing fee or move to proceed IFP. In August 2018 Complainant filed another request for a hearing in which he argued that the Subject Judge denied him his constitutional due process right to contest the disorderly conduct charge. The next month, the Subject Judge entered an order denying the motion because the case had been dismissed.

Complaint

In his Complaint of Judicial Misconduct or Disability, Complainant alleges that the Subject Judge's February 2018 order "fraudulently" stated that Complainant was suing the Secretary of the Department of Veterans Affairs. He asserts that the Subject Judge received by email certain court documents that "clear[ed] [his] name as it pertains to a Disorderly Conduct charge and penalty of a ban that was illegally issued to [him] by the Department of Veterans Affairs."

Complainant complains that the Subject Judge is "blatantly refusing" to hold a hearing "due to the fact that she has in her possession and is concealing the fact that she" has documents that "clear [his] name." He alleges that the Subject Judge's "deliberate act" of denying him his constitutional due process right to contest the criminal charge is a crime under 18 U.S.C § 242 (Deprivation of rights under color of law). He also alleges the Subject Judge deliberately delayed acting in order to deny him a hearing, in violation of her oath of office. 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, rulings, findings, and orders in the cases, 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 made fraudulent statements, deliberately violated his rights, committed a crime, concealed documents, deliberately delayed taking action in the case, violated her oath of office, 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