

FILED
U.S. COURT OF APPEALS
ELEVENTH CIRCUIT

OCT 28 2019

David J. Smith
Clerk

CONFIDENTIAL

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

Judicial Complaint Nos. 11-19-90061 and 11-19-90062

IN THE MATTER OF A COMPLAINT FILED BY _____

IN RE: The Complaint of _____ against United States Magistrate Judge
_____ and 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 Magistrate Judge _____ and United States District Judge _____ (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 July 2018 Complainant filed a lawsuit against a company seeking \$10,000 in damages. In September 2018 the defendant filed a motion to dismiss the complaint for lack of subject matter jurisdiction because the amount in controversy did not exceed \$75,000. Later that month, Complainant filed a motion objecting to the defendant’s motion to dismiss and filed a “motion to add evidence to the motion of objection to a dismissal” Judge _____ denied the motion to add evidence without prejudice, finding it did not comply with the court’s local rules.

In October 2018 Judge _____ issued a “Case Management and Scheduling Order and Referral to Mediation” setting various deadlines. In March 2019 Judge _____ issued an order granting the defendant’s motion to dismiss and dismissing the case without prejudice for lack of jurisdiction because the damages sought did not exceed \$75,000. The next month, Complainant filed multiple motions, one of which was docketed as a motion for reconsideration. Judge _____ entered an order denying the motion for reconsideration, finding that Complainant had failed to identify any legal basis for reconsideration, and the order directed the clerk to terminate the other motions because they were not properly before the court.

Complaint

In his Complaint of Judicial Misconduct or Disability, Complainant states that he is “very concerned” that Judge _____ dismissed the case without holding any hearings and without Complainant having discussed the case with the defendant’s attorney before the motion to dismiss was filed. Complainant alleges that it appears Judge _____ and the defendant’s attorney “were in communication according to the case management report sent to [him] in mail signed by Judge _____.” Complainant also complains that Judge _____ delayed ruling on the motion to dismiss, and he is concerned that she “let the case continue” until “weeks away” from the mediation deadline.

Complainant states that he “would like to know” if Judge _____ knew about his appearance in the district court in 2008 in a different case involving the same defendant. He complains that motions he sent to the defendant’s attorney were not filed in court, and he asserts that Judge _____ “continues to ignore the dates on” a motion he sent to the defendant’s attorney in November 2018. Finally, Complainant appears to take issue with Judge _____ order denying his motion to add evidence. 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.

In addition, Rule 4(b)(2) provides that cognizable misconduct does not include “an allegation about delay in rendering a decision or ruling, unless the allegation concerns an improper motive in delaying a particular decision or habitual delay in a significant number of unrelated cases.” The “Commentary on Rule 4” provides that “a complaint of delay in a single case is excluded as merits-related. Such an allegation may be said to

challenge the correctness of an official action of the judge, i.e., assigning a low priority to deciding the particular case.”

To the extent Complainant’s allegations concern the substance of the Subject Judges’ official actions, rulings, findings, and orders in the case, including his complaint about delay in the case, 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 _____ had improper discussions with counsel for the defendant or that the Subject Judges 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