

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. 11-19-90067

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”¹ 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 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 the Secretary of the Department of Veterans Affairs. Complainant filed a response in which he stated he did not intend to file a lawsuit and that he should not be required to pay the filing fee. The Subject Judge then 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

¹ 38 C.F.R. § 1.218 sets forth rules and regulations about security and law enforcement at VA facilities.

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 had 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.

The record also shows that in March 2018 Complainant filed a lawsuit against the Secretary of the Department of Veterans Affairs and others raising claims of discrimination. A couple of months later, he filed an amended complaint in which he stated: (1) he was charged with disorderly conduct under 38 C.F.R. § 1.218 and barred from entering a medical facility; (2) a search of court records showed that he was never charged under 38 C.F.R. § 1.218, such that the ban was illegal; and (3) the purpose of the illegal ban was to prevent him from obtaining employment. The next month, the defendants filed a motion to dismiss the amended complaint, arguing that Complainant failed to state a claim on which relief could be granted. After various proceedings, in August 2018 the Subject Judge issued an order granting the defendants' motion to dismiss, generally finding that Complainant had failed to establish he was entitled to relief on his claims.

About eight months later, in May 2019 Complainant filed a motion to reopen the case, contending that he had newly discovered evidence establishing that the Subject Judge had concealed court documents showing he was never charged with a crime under 38 C.F.R. § 1.218 and was not subject to a ban under that provision. The Subject Judge denied the motion to reopen, finding that the documents were not newly discovered and that, in any event, they would not have changed the disposition of the case. Complainant filed a second motion to reopen, alleging that an attorney had concealed the documents showing that he was never charged with a crime under 38 C.F.R. § 1.218. The Subject Judge denied the motion, again finding that the documents were not newly discovered evidence and would not have changed the disposition of the case.

Later in May 2019 Complainant filed a third motion to reopen, arguing in part that counsel for the defendants had committed fraud by stating that the amended complaint failed to state a claim on which relief could be granted. He also filed a motion for judgment on the pleadings. In June 2019 the Subject Judge entered orders denying the motion to reopen, finding that Complainant had failed to set forth an appropriate reason why the case should be reopened, and denying the motion for judgment on the pleadings because the case was closed. Complainant filed a fourth motion to reopen, again arguing that counsel for the defendants had committed fraud by arguing that the amended complaint failed to state a claim. The Subject Judge denied the motion to reopen, finding that Complainant's arguments were meritless and also addressing his "continued frivolous and improper filings."

Complainant then filed a fifth motion to reopen, again arguing that counsel had committed fraud by arguing that the amended complaint failed to state a claim. The Subject Judge entered an order denying the motion because Complainant failed to set forth an appropriate reason why the case should be reopened, and the order also directed the clerk to revoke Complainant's permission to file documents electronically due to his abuse of the system and disregard of court orders. After that, Complainant filed a sixth motion to reopen, which the Subject Judge ordered stricken. In July 2019 he filed a document entitled "Questions on Procedural Matters," and the Subject Judge entered an order striking the document and directing the clerk not to accept additional documents in the closed case.

Complaint

In his Complaint of Judicial Misconduct or Disability, Complainant alleges that the Subject Judge denied him his constitutional rights to have a hearing to contest the criminal charge of disorderly conduct and the ban imposed on him. He states that the Subject Judge is "refusing" to give him a hearing because she knows Complainant has court documents that prove his innocence, and that this would require that the Subject Judge reopen his "fraudulently dismissed" employment discrimination lawsuit. Complainant also asserts that he did not fail to state a claim on which relief could be granted in that case. Finally, he alleges the Subject Judge deliberately delayed providing him a hearing and issuing a ruling on the matter. 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 engaged in fraud, deliberately delayed taking action in the cases, 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