

CONFIDENTIAL

FILED
U.S. COURT OF APPEALS
ELEVENTH CIRCUIT

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

JAN 28 2020

David J. Smith
Clerk

Judicial Complaint No. 11-19-90068

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 1999 Complainant filed a civil rights action against multiple defendants (Case I). He also filed a motion for leave to proceed in forma pauperis (IFP), which a magistrate judge granted. In April 1999 a district judge who is not the Subject Judge dismissed the case pursuant to 28 U.S.C. § 1915(e)(2).

The record shows that in September 2008 Complainant filed a civil action against multiple defendants and moved to proceed IFP (Case II). In November 2008 a magistrate judge issued an order and report granting the IFP motion and recommending that the case be dismissed, finding that some claims were time-barred and the rest failed to state a claim on which relief could be granted. In March 2009 a district judge is who is not the Subject Judge adopted the report and recommendation and dismissed the case as frivolous.

The record shows that in October 2010 Complainant filed a civil rights action against six defendants raising claims arising out of his arrest and imprisonment (Case III). He also filed a motion to proceed IFP, which a magistrate judge granted. In May 2011 the Subject Judge issued an order: (1) allowing claims of false arrest, false imprisonment, and excessive force against two police officers to proceed; (2) dismissing the remaining claims because they were based on conclusory allegations; and (3) directing the clerk to open a new civil action with respect to the claims against a county defendant.

Complainant's complaint then was docketed as a separate action against the county (Case IV), and in July 2011 he filed an amended complaint in that case.

After that, in Case III Complainant filed a "Motion for Request for Re-Attachment of Dismissed Defendants and Re-Consolidation of Bifurcated Complaint." In December 2011 a magistrate judge issued a report in Cases III and IV recommending that Complainant's motion be denied and his complaint in Case IV be dismissed as barred by res judicata. Complainant then filed in Case III a motion to appoint counsel and in Cases III and IV a motion for reconsideration with respect to the magistrate judge's report and recommendation.

In March 2012 the Subject Judge entered an order adopting in part the magistrate judge's report and recommendation, finding that some of Complainant's claims in Case IV were barred by res judicata and dismissing the remaining claims in that case for failure to plead facts sufficient to support the causes of action. The order also denied Complainant's motion seeking to consolidate Cases III and IV and his motion to appoint counsel. Complainant filed notices of appeal, and this Court later dismissed one appeal for lack of jurisdiction and clerically dismissed the other for want of prosecution.

In September 2012 in Case III, the remaining two defendants filed a motion for summary judgment, and Complainant later filed a response and a statement of material facts. In May 2013 a magistrate judge issued a report recommending that the defendants' motion for summary judgment be granted, generally finding that the defendants were entitled to qualified immunity because the undisputed material facts did not demonstrate any violation of Complainant's constitutional rights.

Over Complainant's objections, in August 2013 the Subject Judge entered an order adopting the report and recommendation and granting the defendants' motion for summary judgment, finding that they were entitled to qualified immunity. Complainant appealed. In May 2014 this Court affirmed, holding that the district court: (1) properly granted summary judgment in favor of two defendants because they were entitled to qualified immunity; (2) did not err in dismissing the claims against three defendants for failure to state a claim; (3) did not abuse its discretion in severing Complainant's claims against the county defendant; and (4) did not abuse its discretion in denying his motion to appoint counsel.

The record shows that in July 2017 Complainant filed a civil rights action against multiple defendants and an IFP motion, and a magistrate judge granted the IFP motion. In August 2017 the Subject Judge entered an order dismissing the case with prejudice, finding that the claims were barred by the applicable statute of limitations. Complainant appealed, and this Court later dismissed the appeal for lack of jurisdiction because the notice of appeal was untimely. Complainant also filed in this Court a petition for writ of mandamus related to the case and a motion to proceed IFP, and in June 2018 this Court

denied the IFP motion because the mandamus petition was frivolous. This Court later clerically dismissed the petition for want of prosecution.

Complaint

In his Complaint of Judicial Misconduct or Disability, Complainant alleges that the Subject Judge “engaged in conduct that is prejudicial to the effective and expeditious administration of the business of the courts, undermined public confidence in the integrity and impartiality of the judiciary, and creates a strong appearance of impropriety.” He states that his Complaint primarily arises out of the Subject Judge’s “abuse of judicial power and willful misapprehension of the law in a series of rulings resulting in the dismissal of at least two” of his cases. He asserts that the “adverse rulings establish a clear pattern and practice of unequal treatment and unfair administration of the law by [the Subject Judge] which can only be explained by willful malice rather than unintentional error.”

Complainant alleges that the Subject Judge “improperly and intentionally” dismissed his July 2017 complaint “for a non-existent statute of limitations violation.” He asserts that the Subject Judge “abused her judicial power by improperly dismissing” the complaint “on a clearly false pretense” in order to “protect” the defendants. He also asserts that his complaint “unequivocally was timely filed” and the “dismissal could not be mere error.” He alleges that the Subject Judge “willfully and intentionally disregarded both the rule of law and the material facts of the case, displaying extreme prejudice and bias towards the Complainant for her own personal interest absent proper judicial procedure and protocol.”

Complainant alleges that the Subject Judge “improperly and intentionally” dismissed his 2010 complaint (Case III) “despite several genuine issues of material fact remaining in dispute to be tried.” He again asserts that the Subject Judge “abused her judicial power to improperly dismiss” the complaint “on a clearly false pretense” in order to “protect” the defendants. He contends that there were genuine issues of material fact in dispute and the “dismissal could not be mere error.” Complainant alleges that the Subject Judge engaged in a “pattern and practice of injustice,” “willfully violated the ethical codes of judicial conduct,” and made adverse rulings to deny him a fair and impartial hearing. He states that “[o]n multiple occasions,” the Subject Judge used her position to deny him equal access to the courts and a fair and impartial jury trial, and he cites as examples Cases I, II, and IV.

Complainant alleges that the Subject Judge violated multiple canons of the Code of Conduct for United States Judges by, among other things: (1) dismissing his cases for “fabricated” and “fictitious” reasons; (2) abusing her judicial power; (3) displaying bias and prejudice; (4) ignoring “the rules of law and judicial procedure”; (5) “willfully fail[ing] to avoid the appearance of impropriety”; (6) “willfully fail[ing] to perform the

duties of her office fairly, impartially, and diligently”; and (7) and “willfully fail[ing]” to accord him his constitutional rights.

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 Complainant’s 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 with which Complainant takes issue, he provides no credible facts or evidence in support of his claims that the Subject Judge dismissed cases for fabricated or fictitious reasons, acted with an improper or illicit motive, was biased or prejudiced against him, acted to “protect” defendants, was otherwise not impartial, 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