

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 No. 11-19-90076

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 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 alleged: (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, and 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 that 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 that he was never charged with a crime under 38 C.F.R. § 1.218. 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 entered an order denying the motion to reopen, finding that Complainant's arguments were meritless, and the order warned him that his continued filing of frivolous, repetitive, or improper motions could result in denial of access to the court's electronic filing system.

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's "cognitive ability in reading comprehension[] comes into question as it pertains to her understanding that [he] provided clear and convincing evidence" in his third, fourth, and fifth motions to reopen showing that he stated a claim on which relief could be granted. Complainant asserts the Subject Judge "believed the fraudulent misrepresentation of facts" by opposing counsel that the amended complaint failed to state a claim.

Complainant states that he believes the Subject Judge "has a cognitive impairment of reading and comprehending the fact that" he stated a claim on which relief could be granted. Finally, he alleges that the Subject Judge retaliated against him for filing previous Complaints of Judicial Misconduct or Disability against her, and he contends that she retaliated against him by denying his fifth motion to reopen and by revoking his access to electronic filing. 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 case, 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 suffers from a disability, retaliated against him for filing Complaints of Judicial Misconduct or for filing case-related materials, 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