

CONFIDENTIAL

FILED
U.S. COURT OF APPEALS
ELEVENTH CIRCUIT

JAN 22 2020

David J. Smith
Clerk

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

Judicial Complaint No. 11-19-90077

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”).

As an initial matter, after Complainant filed his Complaint, he filed a supplemental statement. The filing of the supplemental statement is permitted. See 11th Cir. JCDR 6.7.

Background

The record shows that in October 2016 Complainant filed a lawsuit against a company, alleging that faulty electronic monitoring equipment that the company had manufactured caused him to be arrested several times. In March 2017 Complainant filed a second amended complaint, and a couple of months later, the defendant filed a motion to dismiss and a motion for the court to take judicial notice of exhibits pertaining to Complainant’s previous cases. After additional proceedings, in June 2017 the Subject Judge entered an opinion and order granting the defendant’s motion to dismiss and motion to take judicial notice and dismissing the case with prejudice because the claims were barred by the applicable statute of limitations.

Complainant filed a notice of appeal that sought reconsideration of the Subject Judge’s opinion and order. He also sought the Subject Judge’s recusal, arguing that she should recuse because of her background as a former state prosecutor and former state court judge and because she has interest in technology. In September 2017 the Subject Judge issued an opinion and order construing the filing as a motion for reconsideration and denying it. The Subject Judge also denied the motion to recuse, finding that a reasonable person would not question the Subject Judge’s impartiality in the case. This

Court affirmed the dismissal of Complainant's complaint because he had failed to allege physical harm to his person or property. Complainant then filed in the district court multiple motions for relief from judgment, which the Subject Judge denied. Complainant appealed again, and in May 2019 this Court affirmed the denial of the motions for relief from judgment. After that, Complainant filed in the district court additional motions seeking various types of relief, which the Subject Judge denied.

The record shows that in July 2017 Complainant filed an amended 28 U.S.C. § 2254 petition for writ of habeas corpus challenging a certain state court conviction and alleging that his attorney had coerced him into pleading guilty. In September 2017 he filed a motion for a temporary restraining order (TRO), preliminary injunction, and permanent injunction, seeking to have the state remove him from the sex offender registry. He also filed a motion to recuse the Subject Judge, arguing that there was a possibility of bias because of her background as a former state prosecutor and former state court judge and because of her rulings in his previous case.

In November 2017 the Subject Judge entered an order denying the motion for a TRO and injunctive relief, finding that Complainant had not established that he was entitled to the relief sought because, among other things, he had not demonstrated a substantial likelihood of success on the merits. The Subject Judge also entered an order denying the motion to recuse, generally finding that Complainant had failed to show that recusal was necessary. Complainant appealed the two orders, and this Court later clerically dismissed the appeal for want of prosecution.

In January 2018 Complainant filed in the district court a motion to construe his § 2254 petition as a 28 U.S.C. § 2255 motion to vacate, set aside, or correct his sentence, and in May 2018 a magistrate judge denied the motion as moot and construed the § 2254 petition as a § 2255 motion. Also in May 2018 Complainant filed a motion for reconsideration of the order denying his motion for a TRO and injunctive relief. In August 2018 the Subject Judge issued an opinion and order dismissing the motion for lack of jurisdiction. In November 2018 Complainant filed an amended response to the order construing his § 2254 petition as a § 2255 motion, and in May 2019 he filed a reply to the state's response to his § 2255 motion. In August 2019 Complainant filed an emergency motion for a TRO and injunctive relief, again seeking to be removed from the state's sex offender registry. A few days later, the Subject Judge entered an order denying the motion, finding that Complainant had not established he was entitled to the relief sought.

The record also shows that in March 2018 Complainant filed a lawsuit against a governor, state attorney general, and state attorney, raising a claim of malicious prosecution. In May 2018 he filed a motion to transfer venue and an emergency motion for a TRO and preliminary injunction, seeking to enjoin the defendants from enforcing a certain state statute. The next month, the Subject Judge issued an opinion and order denying the motion for a TRO and injunctive relief because it did not meet the

requirements of Fed. R. Civ. P. 65(b). In October 2018 the Subject Judge entered an opinion and order adopting a magistrate judge's report and recommendation and denying the motion to transfer venue. In March 2019 Complainant filed a second amended complaint. In July 2019 a magistrate judge directed Complainant to pay the filing fee or move to proceed IFP, and the next month, Complainant filed an affidavit of indigency.

Complaint

In his Complaint of Judicial Misconduct or Disability, Complainant alleges that the Subject Judge has "displayed unethical conduct that is in conflict with" the Code of Conduct for United States Judges. He contends that because the Subject Judge previously served as a state prosecutor and state court judge, "it is axiomatic that she should have recused herself" from his cases and her "refusal to recuse" violated Canon 2 of the Code of Conduct. He asserts, "It is clear now that [the Subject Judge] is still acting in the interest of her 'old job' in protecting the interests of" the state "instead of acting impartially in her new job as a federal judge." He also alleges that the Subject Judge is involved with technology, which required her to recuse in his case because it was against a technology company.

Complainant states that he has "developed a clear fear of [the Subject Judge's] negative impact on [his] life and possibility of more negative impact thru her biased decisions" in his cases. He describes certain rulings in his cases with which he takes issue, complaining that the Subject Judge, among other things, dismissed a case without providing him leave to amend his complaint and improperly took judicial notice. He asserts that the Subject Judge "either dislikes Pro Se litigants or dislikes me personally for my criminal record or the nature of the charges against me." Complainant also states, "Either way, she is discriminating against me. It seems her objective is to protect her former co-workers" in the state, protect the interest of the state, or both. Finally, he complains about delay in one of the cases.

Supplement

In his supplemental statement, Complainant states that this Court "seems to be complicit in allowing [the Subject Judge] to continue her 'serious prejudice' of [his] litigation." Complainant takes issue with the Subject Judge's rulings in his first case, specifically contending that she dismissed the case with prejudice without allowing him to amend his complaint, she improperly took judicial notice of certain matters, and the reason for the dismissal was "not true" and "not held up" by this Court.

Complainant sets out what he states are the Subject Judge's responses to questions asked when she was nominated to be a federal judge, and he gives his "opinion on why she is not living up to the commitments she made when she signed on for this job and how each decision she has made in [his] pro se cases act contrary to her answers." Complainant alleges that the Subject Judge: (1) is not impartial and "has shown blatant

negativity and bias towards all” his cases; (2) continues to “look[] out for the interests” of the state and her “old job”; (3) has not listened to his arguments and likely does not read his briefs; (4) has not followed precedent; (5) has been disrespectful and not shown humility or patience; and (6) was “pissed off” that Complainant asked her to recuse. He also asserts that the Subject Judge’s “rulings seem to be cut and pasted from the opposing counsel’s argument briefs,” and he complains about delay in two of his cases. Finally, Complainant asserts that two attorneys for the defendant in his first case “had and may continue to have a strong influence on” that case.

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.”

To the extent Complainant’s allegations concern the substance of the Subject Judge’s official actions, rulings, findings, and orders in the cases, including his complaints about the Subject Judge’s failure to recuse, the allegations are directly related to the merits of the Subject Judge’s decisions or procedural rulings. Complainant’s remaining claims are based on allegations lacking sufficient evidence to raise an inference that the Subject Judge was biased or prejudiced against Complainant or pro se litigants, was not otherwise impartial, treated him in a demonstrably egregious and hostile manner, violated the Code of Conduct for United States Judges, delayed a decision in two of Complainant’s cases based on any improper motive, 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