

CONFIDENTIAL

JAN 28 2020

BEFORE THE CHIEF JUDGE
OF THE ELEVENTH JUDICIAL CIRCUIT

David J. Smith
Clerk

Judicial Complaint Nos. 11-19-90078 and 11-19-90079

IN THE MATTER OF A COMPLAINT FILED BY _____

IN RE: The Complaint of _____ against former 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 former 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”). Judge _____ retired as a magistrate judge in _____.

Background

The record shows that in 2012 Complainant filed a 42 U.S.C. § 1983 action against multiple defendants, generally alleging that they were deliberately indifferent to his serious medical needs after he fell and was injured at his place of incarceration. Among other things, he alleged that a Registered Nurse, _____, failed to order an x-ray of his neck despite his complaint of neck pain. In January 2013 the case was transferred to the United States District Court for the _____ District of _____. In November 2013 Judge _____ issued a report recommending that the action be dismissed. Over Complainant’s objections, in June 2014 Judge _____ adopted the report and recommendation, and the case was dismissed. Complainant appealed.

In September 2015 this Court issued an opinion affirming in part and reversing and remanding in part. This Court held, among other things, that: (1) Complainant sufficiently stated a claim against _____ and two other defendants for delaying diagnosis and treatment of his neck and back injuries; (2) he stated a claim against those defendants and another one for failing to treat his pain; and (3) the district court erred in dismissing his complaint without giving him at least one opportunity to amend.

After that, Complainant filed an amended complaint in the district court. In March 2016 Judge _____ issued a supplemental report recommending that certain claims be dismissed and the remaining claims be referred to him for further proceedings. The next month, Judge _____ entered an order adopting the recommendation, dismissing certain claims, and referring other claims to Judge _____ for further proceedings.

After that, Judge _____ entered an order directing the defendants to submit special reports in response to Complainant's initial and amended complaints. The defendants filed answers and special reports. In April 2017 Judge _____ notified the parties that the special reports would be construed as motions for summary judgment. Complainant later filed a response.

In February 2018 Judge _____ issued a report recommending that the motions for summary judgment be granted as to all defendants and claims and that the action be dismissed with prejudice. Judge _____ generally found that there was no evidence creating a genuine dispute of material fact with respect to the claims that the defendants were deliberately indifferent to Complainant's serious medical needs. Among other things, Judge _____ found that although _____ did not order an x-ray of Complainant's neck, the absence of evidence of serious injury in the x-rays of the rest of his body could reasonably lead a medical practitioner to believe that only conservative treatment was necessary. Over Complainant's objections, in May 2018 Judge _____ adopted the report and recommendation and entered a final judgment granting the defendants' motions for summary judgment and dismissing the case with prejudice.

Complaint

In his Complaint of Judicial Misconduct or Disability, Complainant alleges that the Subject Judges intentionally violated his constitutional rights to a fair and impartial hearing and to have his issues properly adjudicated. He contends that the Subject Judges violated the "Judicial canon[is] of ethics and candor" and their oaths of office, as well as committed "intentional, malic[i]ous, wanton, egregious acts and omissions."

Complainant asserts that Judge _____ used "deception" to answer his complaint "on behalf of" _____. According to Complainant, he alleged that _____ lied to him about x-rays of his neck when she did not order a neck x-ray, and she did not address that claim during the case. He asserts that Judge _____ acknowledged in his report and recommendation that no neck x-ray was ordered but covered up and answered for _____ by "making his own non-medical, unqualified opinion" that she acted reasonably. He argues that a medical professional cannot assume a negative x-ray of one part of the body establishes that an x-ray of another part of the body would be negative. Complainant alleges that Judge _____ used his "outlandish" opinion to "erroneously" grant summary judgment in favor of _____.

He also generally contends that he established a dispute of material fact with respect to his claims against _____.

Complainant alleges that Judge _____ erroneously adopted Judge _____ "clearly tainted and bias[ed] opinion." He states that Judge _____ "should have reasonably known" that Judge _____ acts and omissions violated Complainant's constitutional rights and ethical canons. Complainant seeks to have this Court overturn the Subject Judges' "biased" rulings and to have them recused from the case.

Discussion

Judge _____

Rule 11(e) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings of the Judicial Conference of the United States provides, "The chief judge may conclude a complaint proceeding in whole or in part upon determining that intervening events render some or all of the allegations moot or make remedial action impossible as to the subject judge." About this rule, the "Commentary on Rule 11" states in part, "Rule 11(e) implements Section 352(b)(2) of the Act, which permits the chief judge to 'conclude the proceeding,' if 'action on the complaint is no longer necessary because of intervening events,' such as a resignation from judicial office."

To the extent the Complaint concerns Judge _____, in light of his retirement, "intervening events render some or all of the allegations moot or make remedial action impossible," JCDR 11(e). For that reason, pursuant to Chapter 16 of Title 28 U.S.C. § 352(b)(2) and Rule 11(e) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings of the Judicial Conference of the United States, this Complaint proceeding is **CONCLUDED** to the extent it concerns Judge _____. The conclusion of this proceeding in no way implies that there is any merit to Complainant's allegations against Judge _____.

Judge _____

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 Judge _____ official actions, findings, rulings, and orders in the case, the allegations are directly related to the merits of Judge _____ 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 _____ was biased against him, acted with an illicit or improper motive, or otherwise engaged in misconduct.

Therefore, to the extent the Complaint concerns Judge _____, 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** to the extent it concerns Judge _____.



Chief Judge