

CONFIDENTIAL

BEFORE THE CHIEF JUDGE
OF THE ELEVENTH JUDICIAL CIRCUIT

Judicial Complaint Nos. 11-19-90087 through 11-19-90090

FILED
U.S. COURT OF APPEALS
ELEVENTH CIRCUIT

MAY 06 2020

David J. Smith
Clerk

IN THE MATTER OF A COMPLAINT FILED BY _____

IN RE: The Complaint of _____ against United States Magistrate Judge _____ and United States District Judge _____ of the United States District Court for the _____ District of _____, and 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 United States Magistrate Judge _____, United States District Judge _____, former United States Magistrate Judge _____, and United States District 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”). Judge _____ retired as a magistrate judge as of _____.

Background

The record shows that Judge _____ and Judge _____ have been assigned to multiple cases that Complainant has filed in the United States District Court for the _____ District of _____. For example, in May 2018 Complainant filed a prisoner civil rights action against various defendants, generally taking issue with the conditions of her confinement. On the complaint form, Complainant listed three earlier state or federal lawsuits in which she raised related claims. In June 2018 Judge _____ issued an order noting that the court had identified other cases Complainant previously had filed and directing her to show cause why she should not be sanctioned for failure to honestly inform the court of her litigation history.

The next month, Complainant filed a response in which she stated, among other things, that she did not provide all previous case numbers because she lacked access to her legal materials. In August 2018 Judge _____ entered an order dismissing the case, finding Complainant had abused the judicial process by failing to fully disclose her previous lawsuits. The order noted that the dismissal counted as a “strike” for purposes of 28 U.S.C. § 1915(g). Complainant appealed, and this Court later clerically dismissed the appeal for want of prosecution.

The record also shows that in February 2018 Complainant filed in the United States District Court for the _____ District of _____ a 28 U.S.C. § 2254 petition for writ of habeas corpus challenging certain state court convictions, and the next month the case was transferred to the United States District Court for the _____ District of _____. Judge _____ then issued a report recommending that the § 2254 petition be denied as untimely. In April 2018 Judge _____ entered an order adopting the report and recommendation and dismissing the § 2254 petition.

Complaint

In her Complaint of Judicial Misconduct or Disability, Complainant: (1) alleges Judges _____ and _____ “accused” her of presenting false information in her complaint form “as an excuse to give [her] 3 strikes”; (2) asserts she was unable to list all her earlier cases because she did not have access to her legal papers; (3) states she has not provided any false information in documents submitted to the courts; and (4) asserts it is “ludicrous” to suggest she was trying to hide information. She also contends it is unfair to charge her filing fees when she is seeking relief from “rampant human rights violations.”

Complainant then alleges she is being mistreated at her place of incarceration, asserts that her mail has been tampered with, and complains that documents she submitted were not received by the courts. She states that the Department of Corrections and federal courts apparently have conspired to hinder her legal work. Finally, she asserts that the Judges _____ and _____ “improperly” dismissed her § 2254 petition.

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.” With respect to 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 this 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 _____.


Judges _____, _____, and _____

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 Judges _____, _____, and _____ official actions, findings, rulings, and orders in the cases, the allegations are directly related to the merits of those judges’ decisions or procedural rulings. Apart from the decisions or procedural rulings that Complainant challenges, she provides no credible facts or evidence in support of her claims that Judges _____, _____, and _____ were part of a conspiracy or otherwise engaged in misconduct.

Therefore, to the extent the Complaint concerns Judges _____, _____, and _____, 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 Judges _____, _____, and _____.



Chief Judge