

FILED
U.S. COURT OF APPEALS
ELEVENTH CIRCUIT

FEB 12 2020

David J. Smith
Clerk

CONFIDENTIAL

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

Judicial Complaint No. 11-19-90095

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 November 2015 Complainant filed a pro se 28 U.S.C. § 2254 petition for writ of habeas corpus challenging certain state court convictions. After that, he filed multiple motions seeking various types of relief, including a motion for appointment of counsel. In October 2016 a magistrate judge granted the motion for appointment of counsel, appointed the Office of the Federal Public Defender to represent him, and denied his remaining motions without prejudice. After various proceedings, in May 2017 the Subject Judge entered an order staying the case pending the outcome of Complainant’s appeal of an order denying his motion to proceed pro se.

In September 2017 Complainant filed a “Motion for Leave to File Pro Se Motion for Judgment on the Pleadings” in which he asserted that: (1) the State and the Federal Public Defender had purposely and unethically delayed his habeas proceedings; (2) the “record of the state has been numerously granted delays vexatiously by Respondents that moved to strike a legally sufficient petition”; and (3) the state record was overdue, and the State failed to respond in a timely fashion. Later that month, the Subject Judge entered an order stating that Complainant asserted in his motion that “his interlocutory appeal is taking too long and that he does not care for his court-appointed counsel.” The order denied the motion without prejudice to Complainant re-filing it if this Court concluded he must be allowed to proceed pro se. Since then, there have been additional proceedings in the case.

Complaint

In his Complaint of Judicial Misconduct or Disability, Complainant alleges that the Subject Judge's September 2017 order "was fraudulent in description of claims" he had raised in his motion for judgment on the pleadings. He asserts that the Subject Judge's description of his claims showed "pervasive bias and fraud in judicial proceedings that obstruct justice." He states that the Subject Judge should be removed from his cases and that his pro se motions should be renewed.

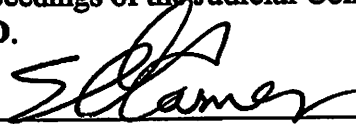
Discussion

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 September 2017 order 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 was biased, committed fraud, obstructed justice, 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