

CONFIDENTIAL

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

Judicial Complaint No. 11-19-90096

IN THE MATTER OF A COMPLAINT FILED BY _____

FILED
U.S. COURT OF APPEALS
ELEVENTH CIRCUIT

FEB 12 2020

David J. Smith
Clerk

IN RE: The Complaint of _____ against United States Magistrate 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 _____ (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 the Subject 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 January and April 2019 Complainant filed multiple pro se motions seeking various types of relief, including motions alleging that his appointed counsel had committed fraud on the court and that a conflict had arisen with counsel. Also in April 2019, the Subject Judge entered an order striking the pro se motions without prejudice under a local rule because Complainant was represented by counsel. Complainant filed a pro se motion for reconsideration, and in July 2019 the Subject Judge entered an order striking the motion because Complainant was represented by counsel. 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 “is purposely misusing” a local rule to cause a “harsh outcome” in the case. He asserts that his appeals to the district judge are being determined by the Subject Judge with “vindictiveness and contrary to law.” Complainant states that he filed

documents describing a conflict with his appointed counsel and requesting to leave to file pro se motions, and the Subject Judge abused his discretion and erred by striking the motions because he was represented by counsel. Complainant states that he filed an appeal to the district judge, but the Subject Judge “decided the appeal” by striking the pleading, contrary to the Federal Rules of Civil Procedure and 28 U.S.C. § 47 (Disqualification of trial judge to hear appeal) and with bias and vindictiveness. Complainant requests that the Subject Judge be recused and that a hearing be held on his pro se motions.

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 acted with an illicit or 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