

CONFIDENTIAL

FILED
U.S. COURT OF APPEALS
ELEVENTH CIRCUIT

MAR 02 2020

David J. Smith
Clerk

BEFORE THE CHIEF JUDGE
OF THE ELEVENTH JUDICIAL CIRCUIT

Judicial Complaint Nos. 11-19-90107 and 11-19-90108

IN THE MATTER OF A COMPLAINT FILED BY _____

IN RE: The Complaint of _____ against United States District Judges
_____ and _____ 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 Judges _____ and _____ (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”).

Background

The record shows that in October 2017 Complainant filed a pro se employment discrimination lawsuit against his employer, a counselor named _____, and others. He also filed a motion to proceed in forma pauperis (IFP) and for the appointment of counsel, and Judge _____ entered an order granting the IFP motion but denying without prejudice the motion for appointment of counsel. In early November 2017 return receipts were entered on the docket, indicating that process had been served on _____ and other defendants.

In December 2017 Complainant filed a motion for leave to file an amended complaint and a motion for entry of a default judgment against _____. Later that month, Judge _____ entered an order directing Complainant to file an amended complaint and denying as moot his motion for entry of a default judgment. In January 2018 Complainant filed an amended complaint. Multiple defendants filed motions to dismiss, and in February 2018 Complainant filed a motion to appoint counsel. In October 2018 the case was reassigned to Judge _____ as the presiding district judge.

The next month, Complainant filed a motion for the appointment of counsel and a motion for a default judgment against _____. The clerk’s office then issued an entry of default against _____ due to her failure to appear in the case. Later in November 2018 _____ filed a response in which she stated that, although she did sign for an envelope pertaining to the case in October 2017, she did not open the envelope because it was not addressed to her. _____ attached a picture of an envelope that was

addressed to Complainant. In January 2019 Complainant filed a motion for entry of a final default judgment against _____ with an affidavit in support.

In March 2019 Judge _____ entered an order construing _____ response as a motion to set aside the clerk's entry of default and granting the motion for good cause shown. The order also denied Complainant's motion for entry of final default judgment against _____ and directed _____ to file an answer or other responsive pleading. Judge _____ then issued an opinion and order granting one defendant's motion to dismiss in its entirety, granting in part and denying in part other defendants' motions to dismiss, directing Complainant to file a second amended complaint, and denying his motions for the appointment of counsel.

In April 2019 Complainant filed a second amended complaint, and _____ and other defendants filed motions to dismiss. In July 2019 Judge _____ issued an opinion and order ruling on the motions to dismiss, dismissing certain claims with prejudice, and allowing certain claims to proceed. After that, one defendant and Complainant filed motions for reconsideration. In August 2019 Judge _____ entered an order granting in part the defendant's motion to reconsider to the extent that the court's previous ruling was amended to find that a certain statute applied to a claim against the defendant. Judge _____ also issued an order denying Complainant's motion to reconsider.

Complaint

In his Complaint of Judicial Misconduct or Disability, Complainant states that he is a member of protected classes and alleges the Subject Judges "exhibited Documented Disability, Racial, Gender Discrimination and Bias toward" him. He contends that Judge _____, without considering his disability, health, economic circumstances, or time, delayed taking action in the case for over nine months and then transferred the case to Judge _____ without a ruling.

Complainant states that the United States Marshals committed "multiple errors" in serving _____. He alleges that Judge _____: (1) favored _____ and discriminated against him; (2) "accepted an unacceptable and flawed" response from _____; (3) improperly construed her response as a motion to stay entry of the default; (4) improperly and with bias revoked the entry of default; and (5) improperly denied the motion for a default judgment and gave _____ time to respond. Complainant also alleges that Judge _____ acted in concert with the clerk in failing to protect Complainant's rights and failing to address his motions, and "[e]ffectively [c]olluded" with _____ and the district court in flouting the court's jurisdiction and the law. Finally, Complainant takes issue with the actions of individuals other than the Subject Judges.

Discussion

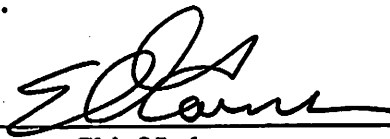
Rule 4(b)(1) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings of the Judicial Conference of the United States, “Allegations Related to the Merits of a Decision or Procedural Ruling,” provides in part that “[c]ognizable misconduct does not include an allegation that calls into question 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.” The “Commentary on Rule 4” provides that “a complaint of delay in a single case is excluded as merits-related. Such an allegation may be said to challenge the correctness of an official action of the judge, *i.e.*, assigning a low priority to deciding the particular case.”

To the extent Complainant’s allegations, including his complaints about delay, concern the substance of the Subject Judges’ official actions, rulings, findings, and orders in the case, those allegations are directly related to the merits of the Subject Judges’ 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 Judges acted with an illicit or improper motive, discriminated against him, were biased against him or in favor of _____, colluded with others, 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