

CONFIDENTIAL

FILED
U.S. COURT OF APPEALS
ELEVENTH CIRCUIT

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

MAR 02 2020

David J. Smith
Clerk

Judicial Complaint No. 11-19-90119

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 August 2018 Complainant filed a civil rights action against multiple defendants and an “Affidavit of financial Statement,” which was docketed as a motion for leave to proceed in forma pauperis (IFP). A magistrate judge issued an order denying the IFP motion, finding that the affidavit did not enable the court to rule on the motion and directing Complainant to complete the appropriate IFP form. After that, Complainant filed, among other things, a “Writ for Default Judgment,” and the Subject Judge entered a paperless order denying the motion as premature.

In September 2018 the magistrate judge issued a report recommending that the case be dismissed without prejudice because Complainant had failed to comply with the order requiring him to complete the IFP form. Complainant then filed documents in which he took issue with various matters. Later in September 2018, the Subject Judge issued an order adopting the report and recommendation, dismissing the case without prejudice, and denying all pending motions. After that, Complainant filed additional documents in the district court. Complainant also filed notices of appeal in the case, and this Court clerically dismissed the appeals for want of prosecution.

Complaint

In his Complaint of Judicial Misconduct or Disability, Complainant alleges the Subject Judge and the district court clerk committed “fraud on the court by practicing law as an attorney for Defendants . . . by altering petition in attempt to grant immunity . . .

while fraudulently in conflict of interest as fiduciary” He alleges the Subject Judge and clerk acted “in violation of the oath of duty” and communicated in violation of 18 U.S.C. §§ 241 and 242. Complainant also takes issue with the actions of the circuit court clerk. He attached documents to his Complaint.

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, 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 with which Complainant takes issue, he provides no credible facts or evidence in support of his claims that the Subject Judge committed fraud, had a conflict of interest, violated her oath of office, committed a crime, 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