

CONFIDENTIAL

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

Judicial Complaint No. 11-19-90120

FILED
U.S. COURT OF APPEALS
ELEVENTH CIRCUIT

FEB 12 2020

David J. Smith
Clerk

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 December 2016 Complainant filed a pro se motion to substitute counsel or for leave to file a pro se amended § 2254 petition: (1) generally complaining about the actions of his appointed counsel; (2) alleging that counsel had misled him; (3) taking issue with the actions of the State; and (4) requesting that court contact _____ to be appointed.

In January 2017 the Subject Judge entered an order denying the motion, stating that the motion generally argued that court-appointed counsel refused to handle Complainant’s § 2254 petition in the manner he preferred and that he was asking the court to appoint _____ to represent him. The Subject Judge found that, in light of Complainant’s “propensity to file frivolous and non-meritorious claims” and given the nature of his assertions in pleadings before the court, counsel was in a better position to determine whether he had any meritorious claims and to assert those claims in a coherent matter. In a footnote, the order stated that Complainant had raised “bizarre” claims in his motion. The order also stated that Complainant’s appointed attorneys were experienced,

competent, and aware of their ethical and professional responsibilities to their client. Since then, there have been additional proceedings in the case.

Complaint

In his Complaint of Judicial Misconduct or Disability, Complainant takes issue with the Subject Judge's January 2017 order denying his motion to substitute counsel. He states that the order "makes claims that are not true" because he did not seek the appointment of _____ "per se," but sought the removal of his current counsel. He alleges that the court allowed his counsel "to cause harsh outcome to appeal," to delay the habeas proceedings, and to remove meritorious claims and instead assert "false" ones. Complainant contends that the Subject Judge's order "was a form of abuse of distress," "ridiculed" his claims, showed "pervasive bias," and "require[d] removal proceedings," and he takes issue with the statement that he raised "bizarre" claims.

Complainant asserts that he "has been the subject of a conspiracy to deny his appeals and murder him in prison by state officials," the "Public Defender's Office is involved," and the Subject Judge "is involved in a murder cover-up scheme" and seeking to prevent claims from being raised. He seeks to have the Subject Judge removed "for violations of Court rules and laws." 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 January 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 acted with an illicit or improper motive,

made false statements, treated him in a demonstrably egregious and hostile manner, was part of a conspiracy, 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