

CONFIDENTIAL

FILED
U.S. COURT OF APPEALS
ELEVENTH CIRCUIT

BEFORE THE CHIEF JUDGE
OF THE ELEVENTH JUDICIAL CIRCUIT

MAY 06 2020

David J. Smith
Clerk

Judicial Complaint Nos. 11-19-90124 and 11-19-90125

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 April 2019 Complainant filed a pro se civil rights action against multiple state court judges and others, alleging in part that he was mistreated in a state court case due to his pro se status and demanding that the court “create a new suspect classification (pro se litigant) and apply a standard of strict scrutiny.” He also filed a motion to proceed in forma pauperis and a “Notice of Removal” stating that he was removing a certain state court case to federal court.

In late April 2019 Judge _____ issued an order dismissing the case without prejudice for failure to state a claim on which relief could be granted, finding that the complaint was a “shotgun pleading” and noting that the state court judges were absolutely immune from suit. The order was attached to Docket Entry _____. The next month, Complainant filed a “Motion for Relief from an Order” to which he attached a copy of the dismissal order and a proposed amended complaint. A couple of days later, Judge _____ issued a paperless order denying the motion.

After that, Complainant filed, among other things, notices in which he contended that parties in the “removed case” were improperly filing documents in state court. In August 2019 Complainant filed a motion to disqualify Judge _____ as well as a “Verified Proposed 2nd Amended Complaint” in which he named Judge _____ as a defendant. On August 20, 2019, Judge _____ entered an order recusing himself and

referring the case to the clerk for reassignment, and the case was reassigned to Judge _____. Also on August 20, 2019, Judge _____ entered an order dismissing Complainant's second amended complaint without prejudice, finding that it failed to state a claim and was a shotgun pleading and noting that the state court judges were absolutely immune from suit.

Later in August 2019, Complainant filed a letter demanding that Judge _____ pay him damages for attempting to criminally deprive him of "valuable causes of action." The next month he filed a "Second Motion for Relief from an Order," alleging among other things that the Subject Judges conspired to prepare Judge Williams' dismissal order. He argued that his second amended complaint could not be dismissed because it was merely a proposed amended complaint. He also filed a motion to disqualify Judge _____, and the next day Judge _____ entered an order recusing herself from the case. In October 2019 a district judge who is not one of the Subject Judges issued an order denying Complainant's Second Motion for Relief and denying him leave to submit any further amended pleadings in the case.

Complaint

In his Complaint of Judicial Misconduct or Disability, Complainant first asserts that no order was attached to Docket Entry _____, and "[o]bviously" Judge _____ "personally accessed the clerk of court records and filed docket entry number _____, himself." Complainant alleges, "At times material Judge _____ uttered a public statement heard by others to the effect that 'WE MUST PROTECT OUR JUDGES,' evidence of bias, prejudice and partisanship." He also asserts that Judge _____ dismissed the case due in part to his "long-standing prejudice against any litigant who threatened the health, safety and welfare of a state or federal judge."

Complainant contends that Judge _____ failed to apply strict scrutiny to the evidence and that he "was required to strictly scrutinize himself" because he obtained the evidence used to dismiss the complaint, which created an "impossible conflict of interest scenario." Complainant argues that Judge _____ refusal to recognize the conflict violated the Code of Conduct for United States Judges, created an appearance of impropriety, and showed that he was biased and prejudiced. Complainant then asserts that Judge _____ recused himself from the case to avoid addressing "his miscreant, criminal and judicial rule breaking activity" described in the motion to disqualify.

Complainant contends that it was impossible for Judge _____ to create her "complex" dismissal order on the same day the case was reassigned to her, and he argues that the only way she could have obtained the information supporting the order was to have "coordinated and conspired with" Judge _____ and edited his work product. Complainant asserts that, on or before the date Judge _____ recused himself, he provided oral and written information to Judge _____ "conspiratorially enabling

her” to issue the dismissal order, and that it is obvious that Judge _____ failed to inform her that he never issued a dismissal order in the case. Complainant also states that Judge _____ apparently “had lost her mind and didn’t know what she was doing” when she dismissed Complainant’s proposed second amended complaint, and he states an order dismissing a proposed complaint is “void, moot, unnecessary and erroneous.”

Complainant states that the Subject Judges were aware that litigants continued to submit filings in a state court case after he removed it to federal court, but refused to take action to stop such activity. He then generally alleges that the Subject Judges committed crimes and violated multiple canons of the Code of Conduct for United States Judges, including by having improper *ex parte* communications and failing to report judicial misconduct. He also alleges the Subject Judges “ignored and violated the mandates” of the United States Supreme Court concerning the treatment of *pro se* litigants.

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 Judges’ official actions, rulings, findings, and orders in the case, the allegations are directly related to the merits of the Subject Judges’ decisions or procedural rulings. Complainant’s remaining claims are based on allegations lacking sufficient evidence to raise an inference that the Subject Judges were biased or prejudiced, had a conflict of interest, committed crimes, were part of a conspiracy, violated the Code of Conduct for United States Judges, 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