

CONFIDENTIAL

FILED
U.S. COURT OF APPEALS
ELEVENTH CIRCUIT

MAY 06 2020

David J. Smith
Clerk

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

Judicial Complaint No. 11-19-90126

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 May 2019 Complainant, a federal prisoner, filed a motion seeking mandamus relief in which he: (1) stated he was injured during a dental procedure at his place of incarceration; (2) argued his facility refused to process his administrative grievances; and (3) sought an order directing the warden to provide him medical attention. He also filed a motion for leave to proceed in forma pauperis (IFP).

A magistrate judge ordered a response to motion, and the government filed a response opposing the request for injunctive relief. In July 2019 the government filed a motion to dismiss, arguing in part that Complainant had failed to exhaust his administrative remedies, and Complainant filed a response the next month.

In September 2019 the Subject Judge issued an order granting the motion to dismiss and dismissing the case without prejudice, finding that Complainant had failed to exhaust administrative remedies under the Prison Litigation Reform Act. The Subject Judge also denied Complainant’s IFP motion and assessed him the full filing fee in light of his average monthly deposits and the balance of his inmate account.

After that, Complainant filed a motion for reconsideration arguing that: (1) the Bureau of Prisons (BOP) refused to file and process his administrative grievances; (2) the BOP was responsible for the filing fee; and (3) his request for injunctive relief was not a

lawsuit filed under 42 U.S.C. § 1983. He also filed a letter to the chief district judge and a document docketed as a supplement to his motion for reconsideration.

Complaint

In his Complaint of Judicial Misconduct or Disability, Complainant first contends that the Subject Judge misconstrued his request for preliminary injunction as a 42 U.S.C. § 1983 lawsuit and maliciously held that Complainant must take the time to exhaust his administrative remedies when he needed emergency surgery. He alleges the Subject Judge maliciously and unlawfully: (1) dismissed the action for failure to exhaust administrative remedies; (2) ordered court costs to be paid by him instead of the BOP; and (3) failed to order the BOP to file and process his grievances. Complainant also alleges the Subject Judge favored the BOP and obstructed justice. 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, rulings, findings, and dismissal 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 malice, violated the law, was biased, obstructed justice, 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**.

A handwritten signature in black ink, appearing to read "Ed Lamer", written over a horizontal line.

Chief Judge