

FILED
U.S. COURT OF APPEALS
ELEVENTH CIRCUIT

MAY 06 2020

David J. Smith
Clerk

CONFIDENTIAL

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

Judicial Complaint Nos. 11-19-90128 through 11-19-90130

IN THE MATTER OF A COMPLAINT FILED BY _____

IN RE: The Complaint of _____ against United States Magistrate Judge _____ and 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 Magistrate Judge _____ and 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 March 2017 Complainant filed a pro se civil rights complaint against Doctor _____, alleging in part that Dr. _____ had engaged in medical malpractice and was negligent in treating Complainant after Complainant was arrested. In May 2017 Complainant filed a complaint against multiple law enforcement officers, generally alleging that they had used excessive force when arresting him, which resulted in personal injury. That filing was docketed as an amended complaint, and Dr. _____ was terminated as a defendant. In December 2017 Judge _____ issued an order dismissing the amended complaint as duplicative of another lawsuit Complainant had already filed. The order determined that the parties in that lawsuit did not significantly differ and the requested relief was the same.

In that case Complainant generally alleged that multiple law enforcement officers had used excessive force in restraining him, which resulted in personal injury. After he filed an amended complaint in that case, Complainant moved for leave to proceed in forma pauperis (IFP). In July 2017 he filed a third amended complaint against multiple law enforcement officers and a city. The same month, Judge _____ entered an order granting Complainant’s IFP motion, and the case proceeded.

Later in July 2017, Judge _____ issued an order dismissing the city and a sheriff as defendants and dismissing Complainant's equal protection claims for failure to state a claim on which relief could be granted. Complainant filed a fourth amended complaint and an objection to the order dismissing defendants and claims. In August 2017 Judge _____ entered an order construing the objection as a motion for reconsideration and denying it as meritless. The order also struck the fourth amended complaint because it was filed without leave of court or permission from the defendants. After that, Complainant filed, among other things, motions for appointment of counsel, which were denied without prejudice by Judges _____ or _____.

After additional proceedings, in March 2018 the remaining defendants filed a motion for summary judgment. Complainant filed, among other things, a response in opposition. In April 2019 Judge _____ issued an opinion and order granting in part and denying in part the defendants' motion for summary judgment. The order denied the motion to the extent the defendants had argued that the claims were barred by Heck v. Humphrey, 512 U.S. 477 (1994), but granted the motion based on a finding that the defendants were entitled to qualified immunity. A judgment was entered in the defendants' favor. After that, Complainant filed additional documents in the district court, including a notice of appeal. In October 2019 this Court dismissed the appeal as frivolous.

Complaint

In his Complaint of Judicial Misconduct or Disability, Complainant takes issue with Judge _____ order dismissing his initial case as duplicative and complains that the court failed to address his medical malpractice claims against _____. He asserts that the clerk or a judge altered his complaint form by inserting two defendants while refusing to insert _____, and he complains that _____ was not added as a defendant in his second case. Complainant alleges that the court's actions constitute misconduct and show a mental or physical disability. He also alleges that the Subject Judges took advantage of him because he is a poor pro se litigant. He complains that the court denied his requests for the appointment of counsel and states that he "strongly believes" there is a conflict of interest, bias, or prejudice in the court. He attached a document 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 Judges’ official actions, rulings, findings, and orders in the cases, the 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 altered any filings, suffered from a disability, took advantage of him, had a conflict of interest, were biased or prejudiced, 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