

CONFIDENTIAL

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

Judicial Complaint Nos. 11-19-90133 through 11-19-90136

IN THE MATTER OF A COMPLAINT FILED BY _____

IN RE: The Complaint of _____ against United States Circuit Judges _____, _____, _____, and _____ of the United States Court of Appeals for the _____ Circuit, 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 Circuit 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”).

As an initial matter, after Complainant filed his Complaint, he filed a supplemental statement. The filing of the supplemental statement is permitted. See 11th Cir. JCDR 6.7.

Background

The record shows that in March 2016 Complainant filed an amended civil rights complaint raising various claims against multiple defendants. In June 2016 a district judge entered an order allowing Complainant to proceed on three claims and dismissing the remaining one. After various proceedings, the defendants filed a motion for summary judgment. In July 2018 a magistrate judge issued a report recommending that the defendants’ motion for summary judgment be granted, and the next month, the district judge entered an order adopting the report and recommendation and granting the summary judgment motion. Complainant appealed.

In November 2018 Complainant filed in this Court a motion for appointment of counsel, and Judge _____ denied the motion several months later. After that, Complainant filed two motions to stay proceedings pending resolution of certain criminal case, and in April 2019 Judge _____ denied one motion to stay as moot. Complainant then filed, among other things, a motion to supplement the record in which he sought to include in the record certain color photographs. In July 2019 Judge

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David J. Smith
Clerk

_____ entered an order denying the motion to supplement the record as unnecessary, noting that this Court already had access to the record on appeal, which included the color photographs.

Complainant then filed a “Motion for Civil Contempt” in which he stated that the appellees had not served him with their brief. He also filed a motion for reconsideration of the order denying his motion to supplement the record. In August 2019 a panel composed of Judges _____, _____, and _____ entered an order denying the Motion for Civil Contempt and directing the appellees to mail a copy of their brief to Complainant’s address of record.

In September 2019 Complainant submitted a motion for appointment of counsel, and the Clerk’s Office construed the document as a motion for reconsideration and returned it unfiled because it was untimely. After that, a two-judge panel that included Judge _____ entered an order denying Complainant’s motion for reconsideration of the order denying his motion to supplement the record. Later in September 2019 Complainant filed a motion to compel the appellees to serve their brief on him. He also submitted an amended motion for appointment of counsel, which the Clerk’s Office returned to him unfiled because it was untimely. In October 2019 a panel composed of Judges _____, _____, and _____ entered an order denying Complainant’s motion to compel as moot and denying his earlier motion to stay. In November 2019 Complainant filed a motion to voluntarily dismiss the case without prejudice, and this Court clerically granted the motion and dismissed the case.

Complaint

In his Complaint of Judicial Misconduct or Disability, Complainant takes issue with the processing of his documents by this Court’s Clerk’s Office, complaining that certain motions he submitted were not filed and forwarded for a ruling by a judge. He also complains that the order granting his motion for voluntary dismissal did not state whether the dismissal was with or without prejudice. He attached documents to his Complaint.

Supplement

In his supplemental statement, Complainant: (1) complains that the Subject Judges did not allow him to supplement the record; (2) states that certain pleadings in the record are not shown “in the law computer”; and (3) requests the return of the exhibit attached 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’ orders in his appeal, 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 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