

CONFIDENTIAL

BEFORE THE CHIEF JUDGE
OF THE ELEVENTH JUDICIAL CIRCUIT

Judicial Complaint Nos. 11-20-90018 and 11-20-90019

FILED
U.S. COURT OF APPEALS
ELEVENTH CIRCUIT

MAY 27 2020

David J. Smith
Clerk

IN THE MATTER OF A COMPLAINT FILED BY _____

IN RE: The Complaint of _____ against United States Magistrate Judge _____ and 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 Magistrate Judge _____ and United States District Judge _____ (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 August 2018 Complainant filed a 28 U.S.C. § 2254 petition for writ of habeas corpus on behalf of her son, alleging that her mentally ill son was being held in jail against his will and was being denied medical attention. Later that month, Judge _____ entered an order directing Complainant to show cause why the action should not be dismissed for lack of jurisdiction, and Complainant filed a response stating that she would present her son’s medical records at a hearing. The next month, Judge _____ set a hearing for the purpose of determining whether Complainant was entitled to pursue the action as next friend on behalf of her son, and a hearing was held in mid-September 2018.

After that, Judge _____ entered an order finding that Complainant had standing to pursue the petition as “next friend” on behalf of her son and directing the respondent to show cause why the requested relief should not be granted. In October 2018 the respondent filed a response, and Complainant filed a reply in which she requested a court order directing that her son be brought before the court to determine whether he was being given proper medical attention.

In February 2019 Judge _____ issued an order deeming the case ripe for summary disposition in light of the respondent’s response and providing Complainant 20

days to provide additional evidence or argument. In July 2019 Judge _____ issued a report: (1) noting that Complainant had not responded to the earlier order; (2) finding that her petition should be treated as a 28 U.S.C. § 2241 petition; and (3) recommending that the § 2241 petition be denied on multiple grounds. The next month, Judge _____ entered an opinion adopting the report and recommendations, noting that Complainant had not filed a response to the report. A judgment was entered denying the habeas petition and dismissing the case without prejudice.

Complaint

In her Complaint of Judicial Misconduct or Disability, Complainant contends that the Subject Judges “fail[ed] to answer” her petition for writ of habeas corpus, which sought an order bringing her son before the court to determine whether he was being held unlawfully.¹ She notes that Judge _____ set a court date to determine whether she had the legal right to file the petition on her son’s behalf, and it was determined she did have that right.

Complainant complains that the Subject Judges did not act again until one year later when Judge _____ “abruptly dismissed the case stating that [she] never responded, which was false.” She states that she tried to meet or get a response from Judge _____ but was prevented from doing so by the clerk’s office and others. She notes that she filed several writs on behalf of her son and the Subject Judges failed to “obey the writ,” and she requests an investigation into the Subject Judges. She attached documents to her 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

¹ Complainant states the petition was filed in September 2019, but it appears she is referring to the petition filed in August 2018.

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, findings, rulings, and orders in the case, including her allegation of delay, 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, she provides no credible facts or evidence in support of her claims that Judge _____ made a false statement or that the Subject Judges 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