

CONFIDENTIAL

**FILED
U.S. COURT OF APPEALS
ELEVENTH CIRCUIT**

JUN 30 2020

**David J. Smith
Clerk**

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

Judicial Complaint No. 11-20-90032

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 August 2016 Complainant filed a prisoner civil rights action against multiple defendants, arguing in part that he was being denied adequate medical care at his place of incarceration and seeking injunctive relief. The next month, the Subject Judge entered an order denying Complainant’s request for injunctive relief, generally finding he failed to show he was entitled to the relief sought. After that, Complainant filed, among other things, a motion for clarification and a motion for reconsideration of the Subject Judge’s order. In November 2016 a magistrate judge entered an order directing Complainant to replead his complaint, and Complainant filed an amended complaint the next month raising claims of inadequate medical care and retaliation. In January 2017 the Subject Judge entered an order denying the motion for clarification and motion for reconsideration.

Complainant then filed multiple motions seeking various types of relief. In September 2017 a magistrate judge entered an order ruling on various motions pertaining to the scanning of documents. Complainant filed objections to the order, and the Subject Judge overruled the objections. In March 2018 the magistrate judge issued a report recommending that all claims be dismissed without prejudice for failure to state a claim, except a claim of failure to provide adequate pain relief against nine defendants and the retaliation claim against two defendants. Over Complainant’s objections, the Subject Judge issued an opinion adopting the magistrate judge’s report and recommendation,

dismissing certain claims, and referring the remaining claims to the magistrate judge for further proceedings.

In November 2018 Complainant filed a motion to appoint an expert witness and a motion to dismiss one of the defendants from the action, and the Subject Judge granted the motion to dismiss the defendant. After additional proceedings, in January 2019 the defendants filed special reports in which they generally argued that Complainant was not entitled to relief on his claims. The magistrate judge then denied the motion to appoint an expert witness without prejudice. Complainant filed objections to the magistrate judge's order, and the Subject Judge issued an order overruling the objections, accepting the magistrate judge's recommendation, and denying the motion to appoint an expert witness, finding the issues in the case did not rise to the level necessary for appointment of a medical expert.

In July 2019 the magistrate judge entered an order construing the defendants' special reports as motions for summary judgment, and Complainant filed a response. In January 2020 the magistrate judge issued a report recommending that the defendants' motions for summary judgment be granted, finding no genuine issues of material fact existed with respect to Complainant's remaining claims. Over Complainant's objections, the Subject Judge issued an opinion overruling Complainant's objections, adopting the magistrate judge's report, and accepting the recommendations. A final judgment was entered granting summary judgment in favor of the defendants.

After that, Complainant filed, among other things, a motion to disqualify the Subject Judge in which he argued the Subject Judge was biased against him because he was a prisoner. He also filed a motion for relief from judgment and a motion to alter the judgment. In March 2020 the Subject Judge entered an order denying Complainant's motions. With respect to the motion to recuse, the Subject Judge found there was no basis in or outside the record justifying recusal or that could support a finding of lack of impartiality. Complainant then filed a notice of appeal and a motion to proceed in forma pauperis (IFP) on appeal. The Subject Judge initially entered an order granting the IFP motion, but later issued an order withdrawing the previous order and denying the IFP motion after finding the appeal was not taken in good faith.

Complaint

In his Complaint of Judicial Misconduct or Disability, Complainant alleges the Subject Judge was biased in favor of the defendants and showed "clear favoritism" toward the defendants. He asserts a cursory review of the Subject Judge's rulings shows that the Subject Judge is prejudiced against him, and the "reason for this bias appears to be the fact [he is] a prisoner." Complainant also alleges the Subject Judge repeatedly misconstrued and ignored most of his evidence. He requests that the Subject Judge be removed from his case.

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, findings, rulings, and orders 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 Complainant challenges, he provides no credible facts or evidence in support of his allegations that the Subject Judge was biased against him or in favor of the defendants, ignored evidence, 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**.

/s/ William H. Pryor Jr.

Chief Judge