

CONFIDENTIAL

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

Judicial Complaint No. 11-20-90051

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

AUG 31 2020

**David J. Smith
Clerk**

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

In March 2018 the Supreme Court of _____ issued an order disbaring Complainant from the practice of law in the state for his neglect of matters involving two clients and misconduct arising out of his divorce proceedings.

In August 2018 the Subject Judge issued an order noting that: (1) the state supreme court had dismissed Complainant from the practice of law in the state; (2) membership in the district court’s bar was contingent on an attorney being an active member in good standing with the state bar; (3) the court had entered an order suspending Complainant from the practice of law before the court; and (4) Complainant responded to the order and moved to reinstate his admission. The Subject Judge stated that the court considered Complainant’s motion for reinstatement and related supplemental submissions, all of which challenged the process and actions of the state supreme court. The order then: (1) denied Complainant’s motion for reinstatement to practice; (2) removed him from the rolls of persons authorized to practice law before the court; and (3) disbarred him.

Complaint

In his Complaint of Judicial Misconduct or Disability, Complainant alleges the Subject Judge engaged in misconduct and violated multiple mandatory standards of

judicial conduct in connection with his handling and adjudication of Complainant's disciplinary matter in the district court. Complainant states he responded to the Subject Judge's show cause order and requested a hearing, but the Subject Judge denied his request for a hearing in violation of his due process rights. He notes that that the local rule in effect at the time did not entitle an attorney disbarred by the state supreme court to a hearing, and he contends that the rule was unconstitutional.

Complainant states his response and supplemental response to the show cause order detailed "extensive fraud" on the court, and he contends that, despite this, the Subject Judge issued a disbarment order without holding a hearing, which made it appear that he was trying to cover up, hide, and conceal the fraud on the court and bad faith actions by the state bar and state supreme court. He also asserts his responses to the show cause order provided clear and convincing evidence that the Subject Judge arbitrarily, intentionally, willfully, and with indifference departed from prevailing law. He states the Subject Judge's order calls into question his fairness, impartiality, neutrality, and respect for constitutional due process rights.

Next, Complainant contends that the Subject Judge: (1) failed to conduct an independent review of the state court proceedings, which would have clearly shown that Complainant was deprived of due process; (2) issued the disbarment order even though there was a lack of sufficient proof on the face of the record that Complainant violated any bar rules; and (3) had prior knowledge of the facts of Complainant's disbarment case. Finally, Complainant alleges the Subject Judge violated his due process rights, prejudiced the administration of justice, violated several canons of the Code of Conduct for United States Judges, and violated his oath of office. He attached various 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.

In addition, the “Commentary on Rule 4” provides:

The phrase “decision or procedural ruling” is not limited to rulings issued in deciding Article III cases or controversies. Thus, a complaint challenging the correctness of a chief judge’s determination to dismiss a prior misconduct complaint would be properly dismissed as merits-related — in other words, as challenging the substance of the judge’s administrative determination to dismiss the complaint — even though it does not concern the judge’s rulings in Article III litigation.

The district court’s Local Rule _____ states in part that when an attorney is disbarred by another court, the attorney is automatically suspended and, unless within 30 days of the suspension order, the attorney shows good cause, the attorney will be automatically disbarred. Complainant acknowledges that the local rule in effect at the time of his disbarment did not require that a hearing be held.

To the extent Complainant’s allegations concern the substance of the Subject Judge’s official actions, findings, rulings, and orders in the disciplinary proceedings, the allegations are directly related to the merits of the Subject Judge’s decisions or procedural rulings. Complainant’s remaining claims are based on allegations lacking sufficient evidence to raise an inference that the Subject Judge acted with an illicit or improper motive, acted to conceal fraud upon the court or other misconduct, was not impartial, violated the Code of Conduct for United States Judges, violated his oath of office, 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