

CONFIDENTIAL

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

Judicial Complaint No. 11-20-90066

**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. Later in March 2018 the Subject Judge issued an order adopting the Supreme Court of _____ order and striking and deleting Complainant from the rolls of attorneys authorized to practice law in the district court.

Complaint

In his Complaint of Judicial Misconduct or Disability, Complainant alleges the Subject Judge issued a summary disbarment order without giving him an opportunity to show cause why he should not be disbarred, in violation of a local rule of the district court. He states, while the rule “may not be exactly or precisely on point,” he nevertheless was not given an opportunity to show cause, despite that he never waived his right to show cause. Complainant contends the Subject Judge arbitrarily disbarred him, demonstrated deliberated indifference, violated his due process rights, and departed from prevailing law, local rules, and constitutional provisions.

Complainant states that, if he had been given an opportunity to show cause, he would have advised of extensive fraud on the court that was committed in the state court

disciplinary matter. He states the Subject Judge's order called into question his fairness, impartiality, neutrality, and respect for the constitutional right to due process. He asserts the Subject Judge either failed to conduct an independent review of the state court disciplinary proceedings, which would have shown that he was deprived of due process, or he ignored the violation of due process and lack of sufficient proof that he violated any bar rules. Finally, Complainant alleges the Subject Judge violated his due process rights, prejudiced the administration of justice, and violated several canons of the Code of Conduct for United States Judges. He attached 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 if an attorney has been disbarred by a state court, the attorney may be provisionally suspended and, unless good cause is shown within 30 days from the date of such suspension, an order of disbarment shall be entered.

To the extent Complainant's allegations concern the substance of the Subject Judge's official actions, findings, and disbarment order 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, was not impartial, violated the Code of Conduct for United States Judges, 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