

FILED
U.S. COURT OF APPEALS
ELEVENTH CIRCUIT

NOV 25 2020

David J. Smith
Clerk

CONFIDENTIAL

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

Judicial Complaint No. 11-20-90080

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 July 2016 Complainant filed a 28 U.S.C. § 2254 petition for writ of habeas corpus challenging certain state court convictions. He also filed a motion for leave to proceed in forma pauperis, which a district judge who is not the Subject Judge granted. In August 2019 the case was reassigned to the Subject Judge as the presiding district judge.

In October 2019 Complainant filed a “Certificate of Interest” in which he stated that the Subject Judge, when he was a state court judge, had entered an order denying in part a motion for post-conviction relief Complainant had filed in the state court proceedings being challenged in the § 2254 petition. The next month, Complainant filed a notice seeking an update on the status of the § 2254 petition.

In June 2020 the Subject Judge issued an order denying Complainant’s § 2254 petition, finding certain claims were procedurally barred and Complainant failed to establish he was entitled to relief on the remaining claims, and a judgment was entered against Complainant. The next day, the Subject Judge issued an order: (1) withdrawing the order denying the § 2254 petition and vacating the judgment; (2) noting he had discovered he had a “minor role” in Complainant’s underlying state court proceedings; and (3) directing the clerk to randomly reassign the case to another judge.

The case was then reassigned to a different district judge. In late June 2020, the district judge entered an order denying Complainant's § 2254 petition. In August 2020 Complainant filed a motion to recuse the district judge and a motion for relief from the order. The district judge entered an order denying both motions and noted in a footnote that it appeared the Subject Judge had "unintentionally overlooked" the Certificate of Interest that had been filed. Complainant filed a notice of appeal, and in November 2020 this Court issued an opinion: (1) dismissing the appeal in part for lack of jurisdiction to the extent Complainant sought to appeal the order denying his § 2254 petition; and (2) noting that the appeal may proceed to the extent he challenged the denial of his motion to recuse and Rule 60(b) motion for relief.

Complaint

In his Complaint of Judicial Misconduct or Disability, Complainant notes that the Subject Judge continued to participate in the § 2254 proceedings after Complainant filed a Notice of Interest pointing out that he had been involved in the underlying state court proceedings. Complainant asserts there was "no possible way that [the Subject Judge] could remain impartial and unbiased in his analysis of the issue, since he would be ruling on the propriety of his own decision." Complainant also takes issue with the Subject Judge's statement that he played only a "minor role" in the state court proceedings, contending that: (1) his underlying decision pertained to two grounds raised in the § 2254 petition; (2) he quoted his own decision in the order denying the § 2254 petition; and (3) he gave deference to his own factual conclusions and credibility determinations from the state court proceedings.

Next, Complainant states that, even though his petition had been pending since July 2016, the Subject Judge "saw fit to waste more time and judicial resources in writing an extensive denial that he was well aware would not stand" He asserts the Subject Judge's "conduct was outrageous, egregious, and unfitting for" a district judge. Complainant then states that, even though the order was withdrawn, it is still on the docket for the next district judge to view "and this was likely [the Subject Judge's] intentions in wasting 10 months to write an order" that he knew would have to be immediately withdrawn or reversed on appeal. 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.

To the extent Complainant’s allegations concern the substance of the Subject Judge’s official actions, rulings, and orders in the case, including his failure to recuse, 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 partial or biased, 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