

CONFIDENTIAL

BEFORE THE CHIEF JUDGE
OF THE ELEVENTH JUDICIAL CIRCUIT

Judicial Complaint No. 11-20-90096

FILED
U.S. COURT OF APPEALS
ELEVENTH CIRCUIT

NOV 25 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”).

As an initial matter, after Complainant filed his Complaint, he filed a supplemental statement. The filing of the supplemental statement is permitted. See 11th Cir. JCDR 6.7.

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. In August 2019 the case was reassigned to United States District Judge _____ as the presiding district judge. In October 2019 Complainant filed a “Certificate of Interest” in which he stated that 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.

In early June 2020 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, 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 the Subject Judge.

In late June 2020, the Subject Judge entered an order denying Complainant's § 2254 petition, finding certain claims were procedurally barred and that Complainant failed to establish he was entitled to relief on the remaining claims. In August 2020 Complainant filed a motion to recuse the Subject Judge, generally arguing that he plagiarized Judge _____ "biased" order, which created an appearance of impropriety. Complainant also filed a Fed. R. Civ. P. 60(b) Motion for Relief from Order, arguing the Subject Judge's order plagiarized Judge _____ "tainted" order, which undermined the integrity of the proceedings.

In mid-August 2020 the Subject Judge entered an order denying the motion to recuse and Rule 60(b) motion for relief. With respect to the motion to recuse, the Subject Judge stated that: (1) he conducted a "thorough independent review of the pleadings and the record" in mid-June 2020; (2) he did not confer or consult with Judge _____; (3) Judge _____ withdrawn order appropriately addressed the claims in the Subject Judge's view, had no relationship to the minor role Judge _____ had played in the underlying proceedings, and "was utilized by [the Subject Judge] after [his] full case review, as it was thorough, and correct"; and (4) the motion to recuse would be denied because Complainant presented only speculative and unsupported allegations of partiality. With respect to the Motion for Relief from Order, the Subject Judge found that Complainant failed to establish an extraordinary circumstance justifying the reopening of the case.

Complainant filed a notice of appeal, and in November 2020 this Court entered an order: (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 first contends that Judge _____ recognized that he should not have participated in the case and "acknowledged that his order [denying the § 2254 petition] was biased," but "left a 'trail of bread crumbs' for the next judge to follow." Complainant then alleges the Subject Judge engaged in misconduct by plagiarizing Judge _____ order in his order denying the § 2254 petition, which created an appearance of impropriety, showed the Subject Judge was biased, and made him a material witness in the Rule 60(b) proceedings. Complainant states the Subject Judge entered a "substantially similar order . . . a mere twenty-eight (28) days" later, and that the order was "very similar in length, 36-pages long, and contained significant amounts of material taken verbatim" from Judge _____ 37-page order.

Complainant states that: (1) “approximately 85-90% of the [Subject Judge’s] Order is substantially the same as [Judge _____] Order”; (2) there was no attribution in the Subject Judge’s order; and (3) the Subject Judge “took only a matter of days” to issue his order, when Judge _____ took nearly 10 months to issue his order. Complainant asserts that the integrity of the proceedings was undermined by the Subject Judge’s “attempt to subvert the effect of Judge _____ recusal from the case by entering substantially the same order less than a month later.” Finally, Complainant states the Subject Judge “acted in a manner inconsistent with due process of law and true independence, fairness and impartiality that we expect from our judiciary”

Supplement

To his supplemental statement, Complainant attached the Subject Judge’s August 2020 order denying the motion to recuse and Rule 60(b) motion for relief, and he states that, in the order, the Subject Judge admitting to copying Judge _____ order. Complainant also contends that “common knowledge,” “common sense,” and the length of time it took Judge _____ to issue his order, show that the Subject Judge did not have adequate time to conduct an independent and thorough review of the record.

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, findings, and orders in the case, 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 inappropriately plagiarized another judge’s order, was biased, was not otherwise impartial, 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