

FILED
ELEVENTH CIRCUIT
JUDICIAL COUNCIL

APR 30 2021

CIRCUIT EXECUTIVE

**FOR THE JUDICIAL COUNCIL
OF THE ELEVENTH CIRCUIT**

11-20-90112

**IN RE: COMPLAINT OF JUDICIAL
MISCONDUCT OR DISABILITY**

ON PETITION FOR REVIEW*


Before: WILSON, MARTIN, JORDÁN, ROSENBAUM, JILL PRYOR, NEWSOM, BRANCH, GRANT, and LUCK, Circuit Judges; MOORE, THRASH, CORRIGAN, COOGLER, DuBOSE, HALL, TREADWELL, WALKER, and MARKS, Chief District Judges.

Upon consideration of the petitioner's complaint by a review panel consisting of Judges Wilson, Martin, Branch, Coogler, and Walker, the order of Chief Judge William H. Pryor Jr., filed on 13 January 2021, and of the petition for review filed by the complainant on 16 February 2021, with no non-disqualified judge on the Judicial Council Review Panel having requested that this matter be placed on the agenda of a meeting of the Judicial Council,

The Judicial Council Review Panel hereby determines that the disposition of this matter was proper and said disposition is hereby **AFFIRMED**.

The foregoing actions are **APPROVED**.

FOR THE JUDICIAL COUNCIL:


United States Circuit Judge

* Chief Circuit Judge William H. Pryor Jr. did not take part in the review of this petition.

FILED
U.S. COURT OF APPEALS
ELEVENTH CIRCUIT

JAN 13 2021

David J. Smith
Clerk

CONFIDENTIAL

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

Judicial Complaint No. 11-20-90112

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 two supplemental statements. The filing of the supplemental statements is permitted. See 11th Cir. JCDR 6.7.

Background

The record shows that in July 2020 Complainant filed a pro se amended complaint against an insurance company and other defendants, generally alleging the defendants conspired to deny him his civil rights. The defendants then filed motions to dismiss the amended complaint, and Complainant filed motions for sanctions against certain defendants.

In August 2020 the Subject Judge issued an order directing Complainant to show cause why the case should not be dismissed and why he should not be subjected to sanctions for filing a complaint and motions that appeared to violate Fed. R. Civ. P. 11(b). The order stated that: (1) Complainant’s motions for sanctions appeared designed to harass, cause unnecessary delay, or needlessly increase the cost of litigation; (2) the court had noted in another matter that Complainant was a prolific filer of civil lawsuits and was not entitled to the leniency usually accorded pro se litigants; and (3) although the complaint appeared to be a professional filing, the citations were “self-referential, erroneous, or irrelevant,” and it contained “incoherent legalese” and appeared to be frivolous.

After that, Complainant filed, among other things, a motion for leave to file a brief and supplemental exhibits and to serve subpoenas on defendants to appear and testify at the show cause hearing. The Subject Judge entered an order granting the motion as to Complainant's request to submit a brief and supplemental exhibits, but denying the motion to the extent he sought to subpoena defendants to appear at the hearing.

After the hearing, the Subject Judge issued an order that found: (1) Complainant's claims were without merit; (2) the case was frivolous and brought for an improper purpose; (3) Complainant had demonstrated a pattern of filing frivolous lawsuits throughout the country; and (4) he was a vexatious litigant. The order directed Complainant to show cause why the court should not impose monetary sanctions or enter an anti-filing injunction, and it preliminarily enjoined him from filing any new civil actions in the district without preapproval by the court.

The Subject Judge later issued an order modifying the scope of the preliminary injunction in light of additional filings Complainant submitted, and the order further enjoined him from submitting any document in any pending case in the district without leave of court. In December 2020 the Subject Judge entered an order that, among other things: (1) dismissed the case for lack of subject-matter jurisdiction; (2) directed Complainant to pay monetary sanctions to the defendants; and (3) permanently enjoined him from filing legal documents or new actions in any forum or tribunal without leave of court. Complainant has filed a notice of appeal.

Complaint

In his Complaint of Judicial Misconduct or Disability, Complainant alleges the Subject Judge: (1) treated him in a demonstrably egregious and hostile manner; (2) discriminated and retaliated against him; (3) evidenced a "malicious intent" to designate him a vexatious litigant; (4) maliciously prevented him from complying with the show cause order; (5) demonstrated bias and prejudice by denying his request to subpoena the defendants to appear at the show cause hearing; (6) prevented him from submitting pleadings without leave of court to delay the administration of justice; (7) held his motions for several days to prevent the opposing parties from responding, which violated his constitutional rights; (8) denied him access to the court; (9) failed to liberally construe his pleadings while "belittling and ridiculing" those pleadings; (10) discredited his professionalism and publicly humiliated him "for apparent invidious racial, political, social, economic or retaliatory motives"; (11) used the judicial office to prevent evidence from being submitted showing that the defendants engaged in insurance fraud; and (12) knowingly participated in criminal insurance fraud. He attached various documents to his Complaint.

Supplements

In his first supplemental statement, Complainant alleges the Subject Judge “is biased and prejudiced against the administration of justice through acts of what may be construed as discrimination contrary to judicial codes of ethics.” He states the Subject Judge acted with malice, bias, and prejudice in preventing the district court clerk from filing Complainant’s pleadings, contending the Subject Judge had “no justifiable cause” for doing so. Complainant also states the Subject Judge “apparently seeks to cause [him] financial and emotional harm” by preventing his case from proceeding, and sought to protect certain defendants by punishing Complainant for complaining about insurance fraud. He attached documents to his first supplement. With his second supplement, Complainant provided copies of motions to expedite that he filed on appeal.

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. Complainant’s remaining claims are based on allegations lacking sufficient evidence to raise an inference that the Subject Judge treated him in a demonstrably egregious and hostile manner, discriminated or retaliated against him, acted with an illicit or improper motive, was biased or prejudiced, protected the defendants, committed insurance fraud, 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