

FILED
U.S. COURT OF APPEALS
ELEVENTH CIRCUIT

FEB 24 2021

David J. Smith
Clerk

CONFIDENTIAL

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

Judicial Complaint No. 11-20-90164

IN THE MATTER OF A COMPLAINT FILED BY _____¹

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 February 2020 Complainant filed a “Petition to Confirm Arbitration Award and to Enter Judgment” pursuant to 9 U.S.C. § 9, seeking confirmation of an arbitration award, and he also filed a motion for leave to proceed in forma pauperis (IFP). He then filed a motion for the court show cause why the arbitration award should not be confirmed, a motion for leave to amend, and an amended motion to confirm a foreign judgment. In April 2020 the Subject Judge entered an order granting the IFP motion, directing the United States Marshal to serve a copy of the complaint and amended complaint on the defendants, and denying the motion to show cause as premature.

In May 2020 Complainant filed a motion for summary judgment, contending the matter was beyond the 90-day threshold for dispute set out in 9 U.S.C. § 12. The next month, a defendant filed a motion to dismiss and for sanctions, arguing in part that Complainant had filed a series of abusive and frivolous actions, and Complainant filed a motion to strike the motion to dismiss as frivolous, immaterial, and scandalous. Later in June 2020, the defendant filed a motion to stay the case pending a ruling on the motion to dismiss, and the Subject Judge granted the motion.

¹ Complainant identifies himself as “_____.”

Complainant then filed a motion for the court to adhere to Title 9 of the United States Code, a motion to strike the motion to stay, and an objection to the order granting the motion to stay. In July 2020 he filed a motion for entry of default, and the court declined to enter a default because one defendant had filed a responsive pleading and the other defendants had not been properly served. Complainant then filed various documents taking issue with orders and filings in the case, as well as a notice of appeal. This Court later issued an order dismissing the appeal of lack of jurisdiction and, to the extent Complainant sought mandamus relief, denying the request.

In August 2020 the remaining defendants filed a motion to dismiss the case and for sanctions, and they later filed a motion to join the motion to stay the proceedings. The Subject Judge granted the motion to join the motion to stay. Complainant then filed multiple motions seeking various types of relief, including a motion to disqualify the Subject Judge in which he argued the Subject Judge had engaged in misconduct, created a conflict of interest, and demonstrated bias.

In January 2021 the Subject Judge entered an order denying the motion to disqualify, granting the defendants' motions to dismiss, denying Complainant's remaining motions as moot, and dismissing his Petition to Confirm Arbitration Award. The Subject Judge found in part that Complainant provided no evidence that there was a valid, enforceable contract or arbitration agreement and that he failed to state a claim on which relief could be granted. The order also directed Complainant to show cause why he should not be sanctioned for his vexatious and abusive filings of frivolous lawsuits. In February 2021 Complainant filed a motion to vacate the court's orders as void and to confirm the arbitration award, as well as a notice of appeal.

Complaint

In his Complaint of Judicial Misconduct or Disability, Complainant contends the Subject Judge failed to confirm the arbitration award as required by "contract, law and statute," and that he instead "unlawfully converted the simple summary motion process required by 9 U.S.C. § 6 into an abusive civil action" He alleges the Subject Judge unlawfully: (1) "engrafted Rule 4 'summons' into a Title 9 summary motion process"; (2) stayed the matter to consider "facially deficient" motions to dismiss; and (3) considered challenges to the award outside of the time limitation set by statute. Complainant asserts the Subject Judge engaged in misconduct because he "created his own court with its own processes and rules and has refused to adhere to applicable law, process and statute." Finally, Complainant states he has been harmed and his due process rights have been violated by the Subject Judge's actions.

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.

All of Complainant’s allegations concern the substance of the Subject Judge’s official actions, rulings, findings, and orders in the case, and the allegations are directly related to the merits of the Subject Judge’s decisions or procedural rulings.

The allegations of this Complaint are “directly related to the merits of a decision or procedural ruling,” JCDR 11(c)(1)(B). For that reason, pursuant to Chapter 16 of Title 28 U.S.C. § 352(b)(1)(A)(ii) and Rule 11(c)(1)(B) 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