

FILED
U.S. COURT OF APPEALS
ELEVENTH CIRCUIT

MAY 05 2021

David J. Smith
Clerk

CONFIDENTIAL

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

Judicial Complaint Nos. 11-21-90014 and 11-21-90015

IN THE MATTER OF A COMPLAINT FILED BY _____

IN RE: The Complaint of _____ against United States Magistrate Judge _____ and 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 Magistrate Judge _____ and United States District Judge _____ (collectively, the “Subject Judges”), 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 August 2020 Complainant filed a civil rights action against multiple defendants, and after that, he filed multiple motions seeking various types of relief. Judge _____ issued orders denying Complainant’s motions, and in an order issued in October 2020 Judge _____ found Complainant had filed 14 frivolous motions that did not comply with the court’s rules and cautioned him that failure to comply with local rules or court orders could result in the imposition of sanctions.

Complainant then filed two “emergency” motions, and Judge _____ issued orders striking the motions for failure to comply with the court’s rules. The orders also directed Complainant to show cause in writing why the case should not be dismissed due to his repeated violations of the court’s rules and orders. In November 2020 Judge _____ issued a report recommending that the case be dismissed due to Complainant’s repeated disregard of the court’s rules and orders and, as an alternative or additional basis, because he lacked standing to bring the claim he appeared to assert. Over Complainant’s objections, Judge _____ issued an order adopting the report and recommendation and dismissing the case.

Complaint

In his Complaint of Judicial Misconduct or Disability, Complainant contends Judge _____ was not correct or honest in his report and recommendation. He then states that one of Judge _____ clerks advised him how to make a “flashdrive” and how to prepare two motions, and he complains that Judge _____ did not mention anything about the clerk’s unauthorized practice of law. Complainant then notes that Judge _____ was a judge in an appeal of a state court case he previously had filed, and he appears to complain about Judge _____ delay in issuing rulings in the above-described case. 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.

Furthermore, Rule 4(b)(2) provides that cognizable misconduct does not include “an allegation about delay in rendering a decision or ruling, unless the allegation concerns an improper motive in delaying a particular decision or habitual delay in a significant number of unrelated cases.” The “Commentary on Rule 4” provides that “a complaint of delay in a single case is excluded as merits-related. Such an allegation may be said to challenge the correctness of an official action of the judge, *i.e.*, assigning a low priority to deciding the particular case.”

To the extent Complainant’s allegations concern the substance of the Subject Judges’ official actions, findings, rulings, report, recommendations, and orders in the case, the allegations are directly related to the merits of the Subject Judges’ decisions or procedural rulings. Apart from the decisions or procedural rulings that Complainant challenges, he provides no credible facts or evidence in support of his claims that Judge _____ was dishonest, Judge _____ had a conflict of interest, or the Subject Judges otherwise engaged in misconduct.

