

CONFIDENTIAL

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

Judicial Complaint No. 11-21-90030

**FILED
U.S. COURT OF APPEALS
ELEVENTH CIRCUIT**

JUN 25 2021

**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”).

Background

The record shows that in December 2020 Complainant filed a lawsuit against a bank. In February 2021 he filed a Request for Clerk’s Entry of Default, contending the defendant failed to respond to the complaint within the required time after being properly served. The docket entry stated that the brief contained an incorrect case number and parties. The next month, the defendant filed a motion to dismiss the case due to insufficient service of process.

In May 2021 the Subject Judge entered an order denying Complainant’s request for a clerk’s entry of default and granting the defendant’s motion to dismiss, finding Complainant failed to properly serve the defendant with process and noting that he failed to respond to the motion to dismiss. After that, Complainant filed a motion for reconsideration and to recuse the Subject Judge, as well as a notice of appeal.

Complaint

In his Complaint of Judicial Misconduct or Disability, Complainant asserts he properly served the defendant by sending a copy of the complaint to an address to which the defendant had requested it be sent. He notes that he later filed a request for clerk’s entry of default, which listed one incorrect case number. He asserts: (1) the clerk refused to follow procedures and notify him of the deficiency; (2) the clerk immediately informed

the Subject Judge and “was probably instructed to send any incorrect item to the” Subject Judge; (3) the Subject Judge took the motion to his court the day it was filed; and (4) neither the clerk nor the Subject Judge ever sent him a notice of deficiency. Complainant states the clerk and the Subject Judge’s actions “seemed suspicious” and that he doubts they would have acted the same way if he was an attorney.

Next, Complainant states he later discovered the defendant filed a motion to dismiss without following the proper procedures, without sending him a copy of the motion, and without attaching an affidavit. He asserts the defendant “was encouraged not to follow the civil procedures requirements in filing” the motion and that, because he is not an attorney, the court and defendant “believe Civil Procedures and Due Process do not apply” to him.

Complainant states he complained about the court’s actions in a telephone message to this Court and that, two days later, the “District or Appellate court likely contacted” the defendant to tell it to file the motion to dismiss and to blame Complainant for failure to properly serve the complaint. Finally, Complainant states, “Non-attorneys filing in the _____ District face wrongful collusion from the Judges, Clerks of Court” and that it is “very apparent . . . the Court’s office contacted the Defendant[] to strategize not allowing the non-attorney Plaintiff Due Process.”

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 above-described case, the allegations are directly related to the merits of the Subject Judge’s 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 the

Subject Judge had inappropriate *ex parte* communications, was biased against Complainant or non-attorneys, colluded with others, 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