

CONFIDENTIAL

BEFORE THE CHIEF JUDGE
OF THE ELEVENTH JUDICIAL CIRCUIT

Judicial Complaint Nos. 11-21-90063 and 11-21-90064

IN THE MATTER OF A COMPLAINT FILED BY _____

IN RE: The Complaint of _____ against United States Magistrate Judges
_____ and _____ 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 _____ (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”). Judge _____ was appointed as a magistrate judge in _____.

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 January 2019 Complainant filed in the United States District Court for the _____ District of _____ a 28 U.S.C. § 2254 petition for a writ of habeas corpus challenging multiple state court convictions for sex offenses involving minors. Later that month, the case was transferred to the United States District Court for the _____ District of _____, and in March 2019 Judge _____ became the magistrate judge assigned to the case.

In April 2019 Complainant filed an amended § 2254 petition challenging his convictions on four grounds. After various proceedings, in May 2021 Judge _____ issued a report recommending that the amended § 2254 petition be denied without an evidentiary hearing, finding each ground raised was successive, untimely, or procedurally defaulted. Over Complainant’s objections, a district judge entered an order adopting the report and recommendation and denying the amended § 2254 petition.

FILED
U.S. COURT OF APPEALS
ELEVENTH CIRCUIT

AUG 20 2021

David J. Smith
Clerk

Complaint

In his Complaint of Judicial Misconduct or Disability, Complainant states that in 1986 or 1987 he was a “one hour photo lab” technician and “developed some rolls of film showing nude children, one in what amounts to a sexual act.” He states the film was provided by Judge _____ (before he was a judge) and another individual, and that Complainant was eventually criminally charged in connection with the photos.

Complainant then takes issue with Judge _____ findings in his habeas proceedings. He alleges that Judge _____: (1) committed perjury and made false statements in her report and recommendation to protect Judge _____ from Complainant’s allegations concerning the photos; and (2) violated his rights of access to a non-biased court and violated his constitutional rights. He also takes issue with his state court proceedings and the actions of individuals other than the Subject Judges. He attached documents to his Complaint.

Supplement

In his supplemental statement, Complainant takes issue with an order issued by a district judge who is not one of the Subject Judges. He also reiterates his allegations that Judge _____ committed perjury to protect Judge _____, blocked Complainant’s access to a non-biased court, and violated his constitutional and civil rights. He attached documents to his supplement.

Discussion

Judge _____

Rule 1(b) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings of the Judicial Conference of the United States provides, “A covered judge is defined under the Act and is limited to judges of United States courts of appeals, judges of United States district courts, judges of United States bankruptcy courts, United States magistrate judges, and judges of the courts specified in 28 U.S.C. § 363.” *See also* 28 U.S.C. § 351(d)(1) (defining “judge” as “a circuit judge, district judge, bankruptcy judge, or magistrate judge”).

Complainant’s allegations against Judge _____ concern his actions before he became a United States magistrate judge, and they are not cognizable under the Rules for Judicial-Conduct and Judicial-Disability Proceedings of the Judicial Conference of the United States.

Thus, to the extent the Complaint concerns Judge _____, the Complaint is “not appropriate for consideration under the Act,” JCDR 11(c)(1)(G). For that reason,

pursuant to Chapter 16 of Title 28 U.S.C. § 352(b)(1)(A)(i) and Rule 11(c)(1)(G) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings of the Judicial Conference of the United States, this Complaint is **DISMISSED** to the extent it concerns Judge _____. The dismissal of this Complaint in no way implies that there is any merit to Complainant’s allegations against Judge _____.

Judge _____

Rule 4(b)(1) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings, “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 Judge _____ official actions, findings, report, and recommendations in the above-described case, the allegations are directly related to the merits of Judge _____ 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 _____ knowingly made false statements, committed perjury, acted to cover up allegations, was biased, or otherwise engaged in misconduct.

To the extent the Complaint concerns Judge _____, the allegations of the 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** to the extent it concerns Judge _____.

/s/ William H. Pryor Jr.
Chief Judge