

CONFIDENTIAL

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

Judicial Complaint No. 11-21-90070

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

SEP 01 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, on September 17, 2020, Complainant filed a complaint alleging that the defendant violated his First Amendment rights by preventing Complainant from appearing on television. Complainant also alleged that the defendant made false statements about Complainant and intentionally harassed Complainant. Complainant represented himself. On September 17, 2020, a magistrate judge granted Complainant’s motion to proceed in forma pauperis and directed that the case be submitted for a frivolity determination pursuant to 28 U.S.C. § 1915. On September 23, 2020, Complainant filed a motion for default judgment against a non-party and, on September 28, 2020, filed a motion for default judgment against the defendant. On October 5, 2020, Complainant filed an affidavit in support of his motion for default judgment against the defendant.

On November 9, 2020, the Subject Judge conducted a frivolity determination pursuant to 28 U.S.C. § 1915. The Subject Judge found that Complainant failed to provide sufficient factual allegations to support the claims and that the First Amendment claim was frivolous. The Subject Judge also denied the motions for default judgment. The Subject Judge denied the motion for default judgment against the defendant because Complainant had not shown that the defendant received service of process and the clerk of court had not made an entry of default in the case. Because Complainant was proceeding pro se, the Court granted Complainant leave to file an amended complaint

within 14 days. The Subject Judge's order stated that, if Complainant did not timely file an amended complaint, the case would be dismissed without prejudice.

Complainant did not file an amended complaint. On December 2, 2020, the Subject Judge dismissed the case without prejudice. On December 3, 2020, the clerk of court issued a judgment dismissing the case without prejudice.

Complaint

In his Complaint of Judicial Misconduct or Disability, Complainant alleges that the Subject Judge's decision to dismiss Complainant's case was based on Complainant's status as a pro se litigant. Complainant contends that the Subject Judge is biased against those who represent themselves in court. Complainant also alleges that the Subject Judge had improper conversations with the defendant without Complainant's consent or presence, which caused the Subject Judge's bias and prejudice against Complainant.

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 cases, 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 is biased against pro se litigants, had inappropriate communications with the defendant, 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

