

CONFIDENTIAL

BEFORE THE CHIEF JUDGE
OF THE ELEVENTH JUDICIAL CIRCUIT

Judicial Complaint No. 11-21-90078

FILED
U.S. COURT OF APPEALS
ELEVENTH CIRCUIT

SEP 27 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”).

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 September 2020 Complainant filed a *pro se* complaint alleging the defendant violated his First Amendment rights by preventing him from appearing on television, made false statements about him, and harassed him. He also filed a motion for leave to proceed *in forma pauperis*, which a magistrate judge granted. He then filed two motions for default judgment.

In November 2020 the Subject Judge entered an order: (1) finding Complainant failed to provide sufficient factual allegations to support his claims; (2) additionally finding his First Amendment claim was frivolous; and (3) denying the motions for default judgment. Because Complainant was proceeding *pro se*, the order granted Complainant leave to file an amended complaint within 14 days. Complainant did not file an amended complaint, and in December 2020 the Subject Judge issued an order dismissing the case without prejudice.

Complaint

In his Complaint of Judicial Misconduct or Disability, Complainant asserts that the Subject Judge stated his decision was based on Complainant's *pro se* status and that he was biased and prejudiced against Complainant because of his *pro se* status. Complainant also alleges the Subject Judge "had improper contact with the other party and or attorney in the case" without Complainant's knowledge or consent.

Supplement

Complainant's supplemental statement includes another copy of his Complaint and additional attachments.

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 was biased against Complainant or *pro se* litigants, had improper *ex parte* communications, 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