

CONFIDENTIAL

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

Judicial Complaint No. 11-21-90108

FILED
U.S. COURT OF APPEALS
ELEVENTH CIRCUIT

DEC 03 2021

David J. Smith
Clerk

IN THE MATTER OF A COMPLAINT FILED BY _____

IN RE: The Complaint of _____ against United States Circuit Judge
_____ of the United States Court of Appeals for the _____ Circuit,
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 Circuit 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 July 2020 Complainant filed a Complaint of Judicial Misconduct or Disability against a circuit judge, No. _____. In September 2021 the Subject Judge dismissed the complaint as merits-related and based on allegations lacking sufficient evidence. Complainant filed a petition for review, and the Judicial Council Review Panel later affirmed the dismissal of the complaint and denied the petition for review. The complaint matter is closed.

Complaint

In the instant Complaint of Judicial Misconduct or Disability, Complainant states the Subject Judge: (1) was provided with proof of judicial misconduct and was involved in “ongoing illicit criminal misconduct”; (2) was “unqualified, unprofessional, irresponsible, rude, and disrespectful”; and (3) demonstrated “blatant partisan activity” and a “willful effort to obtain favor for a friend.” Complainant also takes issue with the Subject Judge’s dismissal of Judicial Complaint No. _____, and he takes issue with the actions of individuals other than the Subject Judge. 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.

In addition, the “Commentary on Rule 4” provides:

The phrase “decision or procedural ruling” is not limited to rulings issued in deciding Article III cases or controversies. Thus, a complaint challenging the correctness of a chief judge’s determination to dismiss a prior misconduct complaint would be properly dismissed as merits-related — in other words, as challenging the substance of the judge’s administrative determination to dismiss the complaint — even though it does not concern the judge’s rulings in Article III litigation.

To the extent Complainant’s allegations concern the substance of the Subject Judge’s order dismissing Complainant’s previous Complaint of Judicial Misconduct or Disability, 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 involved in criminal conduct, treated him in a demonstrably egregious and hostile manner, engaged in partisan political activity, sought to obtain favor for a friend, 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**.



Acting Chief Judge