

CONFIDENTIAL

FILED
U.S. COURT OF APPEALS
ELEVENTH CIRCUIT

DEC 03 2021

David J. Smith
Clerk

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

Judicial Complaint No. 11-21-90109

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

Judge _____ (“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 January 2021 Complainant filed a civil rights complaint against multiple defendants and a motion for leave to proceed *in forma pauperis* (IFP). A magistrate judge then issued an order and report that granted the IFP motion and recommended the complaint be dismissed for failure to state a claim on which relief could be granted. Over Complainant’s objections, the district judge adopted the report and recommendation and dismissed the case. Complainant appealed.

On appeal, Complainant filed a motion for leave to proceed IFP. In July 2021 a circuit judge who is not the Subject Judge issued an order denying the IFP motion, determining the appeal was frivolous. Complainant filed a motion seeking reconsideration of the order, and in September 2021 a two-judge panel that included the Subject Judge denied the motion. Complainant then paid the fee. In October 2021 the appeal was clerically dismissed for want of prosecution because Complainant failed to file a brief within the time set by the rules.

Complaint

In his Complaint of Judicial Misconduct or Disability, Complainant states the Subject Judge was provided with proof of judicial misconduct in his district court case and appeal, was involved in “ongoing illicit criminal misconduct,” and was “unqualified,

unprofessional, irresponsible, rude, and disrespectful.” Complainant also takes issue with the actions of individuals other than the Subject Judge, and he attached documents to his Complaint.

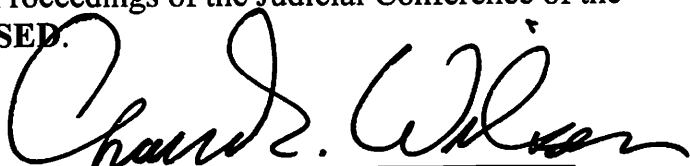
Discussion

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.

To the extent Complainant’s allegations concern the substance of the Subject Judge’s order denying Complainant’s motion for reconsideration on appeal, 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, 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