

CONFIDENTIAL

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

Judicial Complaint No. 11-15-90094

IN THE MATTER OF A COMPLAINT FILED BY _____

**IN RE: The Complaint of _____ against _____, U.S. District Judge for
the U.S. 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

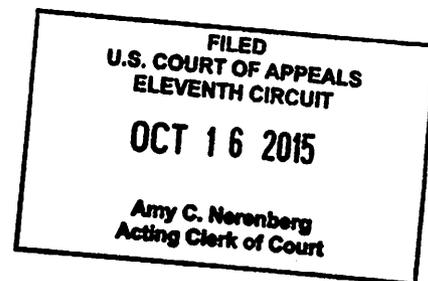
_____ (“Complainant”) has filed this Complaint against United States District Judge _____ (the “Subject Judge”), pursuant to Chapter 16 of Title 28 U.S.C. § 351(a) and the Rules for Judicial-Conduct and Judicial-Disability Proceedings of the Judicial Conference of the United States (“JCDR”).

As an initial matter, after Complainant filed his Complaint, he filed a supplemental statement. The filing of that supplemental statement is approved. See 11th Cir. JCDR 6.7.

Background

The record shows that in November 2007 Complainant filed a third amended complaint in case no. _____ against the State of _____ and other defendants, alleging, among other things, that the _____ Department of Law Enforcement had placed “false charges of homicide” on his criminal background record. A magistrate judge issued a report recommending that the third amended complaint be dismissed for failure to state a claim on which relief could be granted, and in March 2008 the Subject Judge adopted the report and recommendation and dismissed the case. This Court clerically dismissed Complainant’s appeal for want of prosecution.

The record also shows that in June 2015 Complainant filed a lawsuit against the State of _____ and “_____.” Complainant alleged that he had been unconstitutionally convicted of a crime in 2001. He also alleged that the State of _____ had placed “false charges of homicide on [his] criminal background history,” and he noted that he had previously raised the claim in “case no. _____,” which was dismissed without prejudice. He asserted that _____ subjected him to a “retaliation eviction” in violation of state law and that his constitutional rights were violated in



connection with a search of his rented room and seizure of his personal property. He also filed a motion for leave to proceed in forma pauperis (IFP).

On June 23, 2015, the Subject Judge denied the IFP motion and dismissed the complaint without prejudice for failure to state a claim on which relief could be granted. With respect to the claims against the State of _____, the Subject Judge stated that Complainant admitted he presented the allegations in case no. _____, and noted that Complainant had sued the State and related entities based on similar allegations in case no. _____. The Subject Judge then noted that he had dismissed the complaint in case no. _____ for failure to state a claim, and found that because the court had already addressed the matter, the case against the State of _____ would again be dismissed for failure to state a claim. The Subject Judge then noted that the complaint also raised an allegation that Complainant had been “unconstitutionally evicted” from his residence. The Subject Judge found that the claim against _____ was due to be dismissed because it did not state a federal claim, noting that the court had already explained what is and is not a federal claim in an order entered in one of Complainant’s earlier cases.

After that, Complainant filed a motion for default judgment against the defendants. He also filed a “Motion for Removal” of the Subject Judge in which he asserted that he had been the Subject Judge’s neighbor at “_____,” and that the Subject Judge had shown animosity towards Complainant “for no apparent reason” and “as personal vendetta” against him. Complainant alleged that the Subject Judge had “lied” when stating that Complainant: (1) had “filed this complaint three times,” when he had only filed one previous complaint against different defendants; and (2) had alleged that his eviction was “unconstitutional,” when he had alleged that it was “retaliatory.” Finally, Complainant alleged that the Subject Judge failed to review the complaint thoroughly, failed to address the claims, engaged in discrimination, is biased against indigent pro se litigants, and intervened in the case when it was not assigned to him. In August 2015 the Subject Judge denied the motion for default judgment and Motion for Removal, finding the Motion for Removal was “filled with nothing other than unsupported and scandalous allegations.”

Complaint

In his Complaint of Judicial Misconduct or Disability, Complainant first alleges that the Subject Judge: (1) is a friend of the victim in the criminal case in which Complainant was convicted by the State of _____; (2) used his office to obtain special treatment for friends and relatives; (3) had improper ex parte discussions with parties or counsel for one side; and (4) treated litigants in a demonstrably egregious and hostile manner. Complainant then asserts that the Subject Judge lied when he stated: (1) that it had been thoroughly explained to Complainant what constituted a federal claim; and that (2) Complainant had alleged he was “unconstitutionally evicted,” when Complainant had

actually alleged “retaliatory eviction.” Complainant states “it is quite obvious to me that [the Subject Judge] suffers from senility.”

Complainant asserts that the Subject Judge has intervened in Complainant’s cases even though they were not assigned to him. He contends that the Subject Judge has shown animosity towards him because he is “a friend of the victim and a neighbor at _____.” Complainant states that “[a]ll this procrastinating by [the Subject Judge] is unnecessary” when there is no justifiable reason for homicide to be on his criminal background history. He states that the Subject Judge “refuses to admit” that Complainant’s constitutional rights were violated “by the defendant the State of _____ who went to [sic] extent of compulsively lying under oath which is perjury and discrimination by a United State[s] District Judge.” Finally, Complainant takes issue with various actions by the State of _____ and discusses the merits of his claims. He attached to his Complaint a copy of a “Discharge Summary.”

Supplement

In Complainant’s supplemental statement, in addition to reiterating his allegations, he alleges that the Subject Judge used his office “to show favor to the victim in this incident because he is a friend of the victim[’]s family the _____ family at _____,” which Complainant knows because he is a “former resident of _____.” Complainant then states without elaboration that the Subject Judge had “improper discussions with the defendant without my presence ex parte prohibited.” Complainant contends that the Subject Judge “demonstrated prejudice towards” him, violated his constitutional rights, and was “predetermined to deny” his complaint. Finally, Complainant alleges that the Subject Judge committed perjury, proved himself to be a “compulsive liar,” and lied by stating that Complainant “indicated a default judgment against” _____.

Discussion

Rule 3(h)(3)(A) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings of the Judicial Conference of the United States provides that cognizable misconduct does not include “an allegation that is directly related to the merits of a decision or procedural ruling.” The Rule provides that “[a]n allegation that calls into question the correctness of a judge’s ruling, including a failure to recuse, without more, is merits-related.” *Id.* The “Commentary on Rule 3” states in part:

Rule 3(h)(3)(A) 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 power by ensuring that the complaint procedure is not used to collaterally attack the substance of a

judge's ruling. Any allegation that calls into question the correctness of an official action 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, and orders entered in Complainant's cases, 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 allegations that the Subject Judge lied or committed perjury, used his office to obtain special treatment for friends or relatives, engaged in improper ex parte communications, treated litigants or parties in a demonstrably egregious and hostile manner, was biased or prejudiced against Complainant, suffered from "senility," 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**.



Chief Judge