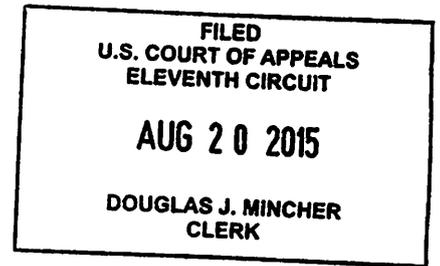


CONFIDENTIAL

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

Judicial Complaint No. 11-15-90095



IN THE MATTER OF A COMPLAINT FILED BY _____

IN RE: The Complaint of _____ against _____, U.S. Magistrate 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 Magistrate 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 Complainant filed a “Tort Complaint” in state court, and the defendant removed the case to the federal district court in March 2015. The defendant then filed a motion to dismiss. In April 2015 Complainant filed a motion to strike the notice of removal “for lack of jurisdiction no case or controversy.” On April 15, 2015, the Subject Judge denied the motion to strike, finding that the court had jurisdiction to consider the claims. After that, Complainant filed a motion to remand the case to the state court, again arguing that the court lacked jurisdiction over the matter. The Subject Judge issued a report recommending that the motion to remand be denied, and the district judge accepted the report and denied the motion.

On May 27, 2015, the Subject Judge entered an order directing Complainant to file a response to the defendant’s motion to dismiss. Complainant then filed a “Motion to Alter or Amend Judgment,” seeking reconsideration of the order denying the motion to remand, and the Subject Judge construed the motion as a successive motion for reconsideration and denied it. In June 2015 Complainant filed a “Motion for Disqualification,” arguing that the Subject Judge had exhibited bias and prejudice against Complainant by entering the May 27, 2015 order. The Subject Judge denied the Motion for Disqualification, finding that Complainant had not established a basis for recusal. The Subject Judge then issued a report recommending that the defendant’s motion to dismiss be granted because Complainant had failed to exhaust his administrative remedies.

Complaint

In his Complaint of Judicial Misconduct or Disability, Complainant alleges that the Subject Judge engaged in misconduct and was unable to discharge the duties of his office due to a mental or physical disability when he entered an order that did not pertain to a “live case or controversy.” Complainant asserts that the court lacked subject matter jurisdiction. He complains that the Subject Judge violated various Canons of the Code of Conduct for United States Judges. Finally, Complainant suggests that his allegations are supported by the Motion for Disqualification that he filed in the case.

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 the 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 allegations that the Subject Judge engaged in misconduct or suffered from a disability.

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