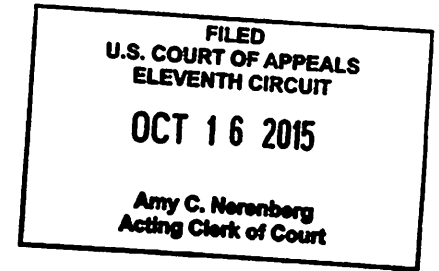


CONFIDENTIAL
BEFORE THE CHIEF JUDGE
OF THE ELEVENTH JUDICIAL CIRCUIT



Judicial Complaint No. 11-15-90099

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 in May 2011 Complainant filed a lawsuit in federal district court against various defendants as well as an “Affidavit of Indigency.” He then filed a “Notice of Removal” purporting to remove the case to the state supreme court. On June 8, 2015, the Subject Judge construed the Affidavit of Indigency as an application to proceed *in forma pauperis* (IFP) and took it under advisement, noting that it was insufficient to allow the court to determine whether Complainant met the financial criteria. The Subject Judge also determined that Complainant’s complaint failed to state any plausible claims. He directed Complainant to file an amended complaint and a “Long Form” application to proceed IFP on or before June 30, 2015.

Complainant then filed: (1) a “Request to Proceed Without Payment of Cost”; (2) a “Notice to the Magistrate Judge” in which he stated that the Subject Judge had acted without Complainant’s consent; and (3) objections to the Subject Judge’s June 8 order in which he argued that the Subject Judge did not have the authority under 28 U.S.C. § 636 to issue orders due to Complainant’s lack of consent. On July 7, 2015, the Subject Judge entered an order noting that Complainant had not filed a Long Form IFP application and an amended complaint as he was ordered to do. The order directed him to show cause as to why the case should not be dismissed. Complainant filed objections to the order, again arguing that the Subject Judge did not have authority to issue orders because Complainant had not consented to his taking action in the case. Complainant also filed

an “Averment of Jurisdiction – Quo Warranto” in which he demanded that the Subject Judge produce certain documents.

On August 24, 2015, the Subject Judge denied Complainant’s “Averment of Jurisdiction,” explained that he had acted within the scope of his authority under 28 U.S.C. § 636(b)(1), and again directed Complainant to file an amended complaint and a Long Form IFP application. After that, Complainant filed, among other things, objections to the Subject Judge’s August 24 order, arguing that the Subject Judge was acting contrary to law by proceeding without Complainant’s consent. In September 2015 the district judge overruled Complainant’s objections, affirmed the Subject Judge’s August 24 order, and gave Complainant until mid-October to comply with that order.

Complaint

In his Complaint of Judicial Misconduct or Disability, Complainant contends that the Subject Judge entered orders in the case without the parties’ consent, in violation of 28 U.S.C. § 636(c)(1). He asserts that the Subject Judge “is operating from his own set of rules,” and that his “sole intent and purpose is to sabotage the complaint” by proceeding without Complainant’s consent and “entering orders attempting to bury the main issues.” Complainant alleges that the Subject Judge has exhibited bias and “lawlessness” by failing to adhere to federal statutes and codes.

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 and orders entered in the case, the allegations are directly related to the merits of the Subject Judge’s decisions or procedural rulings. Furthermore, contrary to Complainant’s allegation, the Subject Judge did not exceed his authority by

entering orders in the case. Although a magistrate judge does not have the authority to rule on a dispositive motion without the parties' consent, a magistrate judge may rule on certain pre-trial matters without such consent. See 28 U.S.C. § 636(b)(1)(A). That is what happened in this case. 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 acted to "sabotage the complaint," exhibited bias and "lawlessness," 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