

FILED
U.S. COURT OF APPEALS
ELEVENTH CIRCUIT
DEC 17 2015
Amy C. Nerenberg
Acting Clerk of Court

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

Judicial Complaint No. 11-15-90128

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”).

Background

The record shows that in July 2012 Complainant filed an amended 28 U.S.C. § 2254 petition for writ of habeas corpus, generally challenging certain state court convictions. After that, a magistrate judge issued a report recommending that his petition be dismissed for lack of jurisdiction, finding that Complainant was not in custody pursuant to the judgment he challenged when he filed his initial petition. In August 2012 a district judge adopted the report and recommendation with one clarification and dismissed Complainant’s habeas petition without prejudice. Complainant appealed, and this Court dismissed the appeal for lack of jurisdiction because the notice of appeal was untimely.

In July 2014 Complainant filed in the district court a “Jury Demand” in which he demanded a jury trial pursuant to Fed. R. Civ. P. 38. He also filed a motion to reopen the time to file an appeal and a motion for a judgment as a matter of law. In August 2014 the district judge denied the motion to reopen the time to file an appeal, finding that the district court could not reopen the time after this Court had already dismissed the appeal, and directed the clerk to terminate the motion for a judgment as a matter of law, finding that the court lacked jurisdiction to grant Complainant’s request. Complainant appealed, and this Court later dismissed the appeal for lack of jurisdiction.

In September 2014 the case was reassigned to the Subject Judge as the presiding district judge. That same month, Complainant filed a “Motion for judgment” under Fed. R. Civ. P. 50(b). In January 2015 the Subject Judge denied the motion for the reasons

stated in the court's August 2014 order. After that, Complainant filed a motion for entry of a default judgment and a motion for leave to file an amended complaint. In August 2015 the Subject Judge denied those motions and directed the clerk not to accept any further filings from Complainant in the case.

Complaint

In his Complaint of Judicial Misconduct or Disability, Complainant contends that the Subject Judge failed to comply with Rules 38 and 39 of the Federal Rules of Civil Procedure and the Seventh Amendment to the United States Constitution by denying Complainant his right to a jury trial. He attached the "Jury Demand" to his Complaint.

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.

All of Complainant's allegations concern the substance of the Subject Judge's official actions and orders entered in the case, and they are directly related to the merits of the Subject Judge's decisions or procedural rulings.

The allegations of this Complaint are "directly related to the merits of a decision or procedural ruling," JCDR 11(c)(1)(B). For that reason, pursuant to Chapter 16 of Title 28 U.S.C. § 352(b)(1)(A)(ii) and Rule 11(c)(1)(B) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings of the Judicial Conference of the United States, this Complaint is **DISMISSED**.



Chief Judge