



CONFIDENTIAL

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

Judicial Complaint No. 11-15-90133

IN THE MATTER OF A COMPLAINT FILED BY _____

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

_____ (“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 July 2014 Complainant filed a 28 U.S.C. § 2254 petition for writ of habeas corpus raising various challenges to his state court convictions. He then filed a motion to amend and supplement his petition, which a magistrate judge granted. After that, he filed multiple motions seeking various types of relief, including injunctive relief. In early November 2014 the magistrate judge issued a non-final report and recommendation (R&R) in which she denied various motions and recommended that Complainant’s motions for injunctive relief be denied. The district judge later adopted the non-final R&R as the order and opinion of the court.

In late November 2014 the magistrate judge issued a final R&R in which she recommended that Complainant’s § 2254 petition be denied, finding that he had procedurally defaulted certain claims, certain claims were not cognizable in a federal habeas petition, and the remaining claims failed on the merits. Complainant filed a notice of appeal as to the magistrate judge’s final R&R. In February 2015 a panel of this Court on which the Subject Judge sat dismissed Complainant’s appeal for lack of jurisdiction, determining that the magistrate judge’s R&R was not a final and appealable decision. Complainant filed a motion for reconsideration. In April 2015 the same panel denied the motion for reconsideration, but held that another motion that Complainant had filed should be liberally construed as a notice of appeal and directed the district court clerk to docket that motion as a notice of appeal.

Meanwhile, in January 2015 the district judge adopted the magistrate judge's final R&R, denied Complainant's § 2254 petition, and dismissed a motion for summary judgment that he had filed. A notice of appeal was docketed as to that order. In that appeal, Complainant filed multiple motions seeking various types of relief. In March 2015 Complainant filed in the district court a motion for relief pursuant to Fed. R. Civ. P. 60(b). The district judge denied the motion, and Complainant appealed. In that appeal, a judge of this Court who was not the Subject Judge issued an order in September 2015 denying Complainant's motion for a certificate of appealability. Complainant filed a motion for reconsideration.

Complaint

In his Complaint of Judicial Misconduct or Disability, Complainant states that it is his "firm belief" that the Subject Judge knew that a retired state court judge committed a felony while on the bench in Complainant's criminal case but that she has not complied with her "duty to hold" that judge responsible. He also contends that the Subject Judge is "failing to adjudicate" his appeal and is not allowing briefing to begin, which is preventing him from being released from an illegal detention. He also asserts that he "cannot get appellate review," which "is a disability." Finally, Complainant alleges that the Subject Judge has ignored motions and grievances that he has filed, and he states that her failure to act evinces fraud and a conspiracy to conceal material facts.

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.

In addition, Rule 3(h)(3)(B) provides that cognizable misconduct does not include "an allegation about delay in rendering a decision or ruling, unless the allegation concerns an improper motive in delaying a particular decision or habitual delay in a significant number of unrelated cases." The "Commentary on Rule 3" provides that "a

complaint of delay in a single case is excluded as merits-related. Such an allegation may be said to challenge the correctness of an official action of the judge—in other words, assigning a low priority to deciding the particular case.”

To the extent Complainant’s allegations concern the substance of the Subject Judge’s official actions and orders entered in Complainant’s appeal, including any perceived delay in his appeals, the allegations are directly related to the merits of the Subject Judge’s decisions or procedural rulings. Apart from the decisions or procedural rulings with which Complainant takes issue, he provides no credible facts or evidence in support of his allegations that the Subject Judge 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