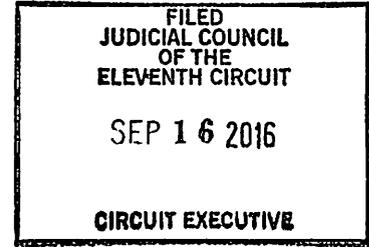


FOR THE JUDICIAL COUNCIL
OF THE ELEVENTH CIRCUIT

111690010



IN RE: COMPLAINT OF JUDICIAL
MISCONDUCT OR DISABILITY

ON PETITION FOR REVIEW*

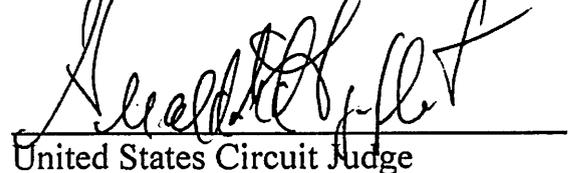
Before: TJOFLAT, HULL, MARCUS, WILSON, PRYOR, MARTIN, JORDAN, ROSENBAUM, and JULIE CARNES, Circuit Judges; MOORE, MERRYDAY, THRASH, BOWDRE, LAND, STEELE, WATKINS, and WOOD, Chief District Judges.

Upon consideration of the petitioner's complaint by a review panel consisting of Judges Tjoflat, Wilson, Pryor, Merryday, and Land, the order of Chief Judge Ed Carnes filed on 6 April 2016, and of the petition for review filed by the complainant on 12 May 2016, with no non-disqualified judge on the Judicial Council Review Panel having requested that this matter be placed on the agenda of a meeting of the Judicial Council,

The Judicial Council Review Panel hereby determines that the disposition of this matter was proper and said disposition is hereby AFFIRMED.

The foregoing actions are APPROVED.

FOR THE JUDICIAL COUNCIL:



United States Circuit Judge

* Chief Circuit Judge Ed Carnes and Chief District Judge Rodgers did not take part in the review of this petition.

CONFIDENTIAL

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

Judicial Complaint No. 11-16-90010

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

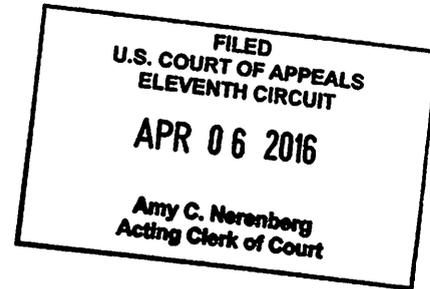
_____ (“Complainant”) has filed this Complaint against United States District Judge _____ (the “Subject Judge”), pursuant to Chapter 16 of Title 28 U.S.C. § 351(a) and the Rules for Judicial-Conduct and Judicial-Disability Proceedings of the Judicial Conference of the United States (“JCDR”).

Background

The record shows that in March 2015 Complainant and another individual, proceeding pro se, filed a lawsuit raising claims under the Fair Debt Collection Practices Act and other rules and statutes. The next month, the defendant filed a motion to dismiss the complaint. On May 14, 2015, the Subject Judge directed the plaintiffs to show cause why they had failed to respond to the defendant’s motion to dismiss. After that, the plaintiffs filed a response in opposition to the motion to dismiss.

In June 2015 the Subject Judge entered an order granting the defendant’s motion to dismiss and dismissing the case with prejudice under the Rooker-Feldman doctrine. The Subject Judge found that the plaintiffs’ claims were inextricably intertwined with their final state court foreclosure judgment, such that the court did not have subject matter jurisdiction over their claims. The plaintiffs filed a motion to alter or amend the judgment, asking the court reconsider its dismissal order and stating that they did not receive timely notice of the defendant’s motion to dismiss.

In July 2015 the Subject Judge entered a paperless order denying the motion to alter or amend. In December 2015 the plaintiffs filed a “Motion to Reopen Time to File an Appeal” in which they stated that they had not received notice of the Subject Judge’s July 2015 order denying their motion seeking reconsideration, and they argued that they were “denied due process in the Ex-Parte communications between the Defendant and the Court” through the court’s electronic filing system. A few days later, the Subject Judge



denied the motion, noting that according to the clerk's records, service of the July 2015 order had been sent to the address the plaintiffs had provided.

Complaint

In his Complaint of Judicial Misconduct or Disability, Complainant first states that the pro se plaintiffs were not allowed to access the district court's electronic filing system, which caused them not to receive notice of certain filings and orders. He contends that the plaintiffs did not receive notice of the defendant's motion to dismiss, and that the magistrate judge denied them due process by giving them only 11 days to respond to the motion. Complainant states that the plaintiffs did not receive notice of the Subject Judge's paperless order denying their motion seeking reconsideration, and he notes that the Subject Judge never responded to two emails he sent her seeking confirmation that an order had issued.

Complainant contends that the plaintiffs' inability to access the electronic filing system, while the court made "determinations from information gathered from" the system, denied them due process, was "tantamount to Ex-Parte communication between" the defendant and the Subject Judge, "created an unfair advantage to" the defendant, "fostered blatant bias" against the plaintiffs, and "created an atmosphere to having improper discussions with parties or counsel for one side in a case." Finally, Complainant states that the plaintiffs "were denied due process and treated in a demonstrably egregious and hostile manner because it is well documented that Pro Se litigants do not have access to electronic communication with the court, yet this practice continued, even after it was highlighted and questioned." Complainant attached documents 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.

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 with which Complainant takes issue, he provides no credible facts or evidence in support of his claims that the Subject Judge engaged in improper ex parte discussions, gave an advantage to the defendant, was biased against the plaintiffs, treated the plaintiffs in a demonstrably egregious and hostile manner, 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**.

A handwritten signature in black ink, appearing to read "E. James", is written over a horizontal line.

Chief Judge