

JUN 07 2016

David J. Smith
Clerk

CONFIDENTIAL

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

Judicial Complaint Nos. 11-16-90024 and 11-16-90025

IN THE MATTER OF A COMPLAINT FILED BY _____

IN RE: The Complaint of _____ against U.S. Magistrate Judge _____
and U.S. District Judge _____ of 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 _____ and United States District Judge _____ (collectively, “the Subject Judges”), 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”).

As an initial matter, after Complainant filed his Complaint, he filed a supplemental statement. The filing of the supplemental statement is approved. See 11th Cir. JCDR 6.7.

Background

The record shows that in September 2015 Complainant filed a prisoner civil rights action against a sheriff, raising a claim that the kitchen at his place of incarceration would not provide him information about the ingredients and nutritional value of the food he was being served. He then filed a motion for leave to proceed in forma pauperis (IFP), which Judge _____ granted.

In December 2015 Judge _____ issued a report recommending that the action be dismissed with prejudice as frivolous, pursuant to 28 U.S.C. § 1915(e)(2)(B)(i). Judge _____ found that Complainant could not hold the defendant liable for the actions of his subordinate, and that Complainant’s claim of failure to receive nutritional information did not rise to the level of a violation of a constitutional right. In January 2016 Judge _____ entered an order adopting the report and recommendation and dismissing the case with prejudice as frivolous.

Complaint

In his Complaint of Judicial Misconduct or Disability, Complainant takes issue with Judge _____ dismissal of his civil rights complaint on the ground that it was frivolous. He also states that he feels the federal court is discriminating against him because he is a detainee.

Supplement

Complainant's supplemental statement consists of a "Motion to Appoint Counsel" in which he requests the appointment of counsel in the Complaint of Judicial Misconduct or Disability proceedings.¹

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 Judges' findings, reports, and orders entered in the case, the allegations are directly related to the merits of the Subject Judges' 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 claims that the Subject Judges discriminated against him 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

¹ Complainant's request for the appointment of counsel is DENIED.

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. Thomas", written over a horizontal line.

Chief Judge