

JUL 25 2016

David J. Smith
Clerk

CONFIDENTIAL

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

Judicial Complaint Nos. 11-16-90030 and 11-16-90031

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 April 2015 Complainant filed a prisoner civil rights action against nine defendants, generally alleging that they violated his First Amendment rights. He also filed a motion for service of summons, a motion to amend his complaint, and an amended complaint. Soon after that, he filed motions to recuse the Subject Judges, arguing that they were biased against him. In May 2015 Judge _____ entered an order denying the motion for service of summons, granting the motion to amend, and directing Complainant to file a second amended complaint because he had failed to adequately set forth his claims. The Subject Judges also entered orders denying the motions to recuse, finding that Complainant failed to state sufficient grounds for recusal.

In June 2015 Complainant filed a second amended complaint, generally alleging that the defendants violated his First Amendment rights by retaliating against him for filing grievances and complaints. He then filed multiple motions seeking various types of relief, including motions for reconsideration of the order denying his motion to serve summons. On July 30, 2015, Judge _____ entered an order denying various motions.

On the same day, Judge _____ entered an order denying Complainant's motions for reconsideration as premature, stating that the allegations in the second amended complaint were sufficient to alert the defendants as to the nature and basis of the claims, and reminding him that he was responsible for service of process on the defendants.

After that, Complainant filed, among other things, a motion seeking the return of service copies and other documents, as well as a motion for extension of time to serve the defendants. In October 2015 Judge _____ granted in part the motion for return of service copies and granted the motion for extension of time. Complainant then filed multiple motions seeking various types of relief, including a motion for leave to file a third amended complaint, a motion for preliminary injunction, and a motion to have the United States Marshals Service serve process on the defendants.

On February 16, 2016, Judge _____ entered an order dismissing four defendants from the case, finding that Complainant had not sufficiently pleaded claims as to those defendants. On the same day, Judge _____ entered an order denying Complainant's motion for a preliminary injunction and related motions, generally finding that he did not establish that he was entitled to the relief sought. On February 18, 2016, Judge _____ issued an order denying various motions, including Complainant's motion for leave to file a third amended complaint. That same day, Judge _____ entered an order granting Complainant's motion to have the United States Marshals serve the summonses and complaint, noting that Complainant was required to file a completed summons as to each defendant and pay a fee.

After that, Complainant filed a renewed motion to recuse the Subject Judges, arguing that they "intentionally den[ie]d" all of his motions, delayed taking action in the case, and showed bias against him and favoritism towards the defendants. He also filed a "Motion to Alter Judgment" in which he took issue with Judge _____ order dismissing certain defendants from the case. In March 2016 the Subject Judges entered orders denying the motion to recuse, finding that it failed to state sufficient grounds for recusal.

Complainant then filed, among other things, a motion for leave to file an amended complaint with a proposed third amended complaint, as well as a petition for a writ of mandamus in which he sought an "answer" to his third amended complaint. In June 2016 Judge _____ entered an order construing the mandamus petition as a motion for expedited review and denying it, noting that the court handled all cases as expeditiously as possible considering its heavy criminal and civil dockets. Judge _____ also granted the defendants' motion for an extension to time to submit an answer.

Complaint

In his Complaint of Judicial Misconduct or Disability, Complainant states that his Complaint is based on: (1) “Blatant Misconduct”; (2) the “Intentional Dismissal of Inmates Civil Suits” and (3) “Misapplying Law.” He then describes orders entered in the case, states that he served defendants by certified mail in November 2015, and asserts that the defendants failed to answer or take other action within 60 days of service. Complainant asserts that on February 16, 2016, Judge _____ dismissed four defendants from the case “without a response from” those defendants, even though Judge _____ had deemed the second amended complaint sufficient.

Complainant notes that in February 2016 Judge _____ “dismissed” the third amended complaint, denied other motions, and ordered Complainant to serve the defendants “for a second time.” Finally, he asserts that the Subject Judges’ orders show that they engaged in “blatant misconduct” and that the defendants “were dismissed intentionally,” given that Complainant served the defendants, they failed to respond, and “still they were dismissed.” He attached various documents to his Complaint.

Supplement

In his supplemental statement, Complainant alleges that Judge _____ misconstrued his petition for writ of mandamus and that the third amended complaint is “being held in abeyance on purpose by” the Subject Judges. Complainant asserts that the Subject Judges’ conduct “is a blatant abuse of discretion” and that he is “being shown blatant” prejudice and bias. He contends that the Subject Judges are misconstruing all of his motions, ignoring certain motions, and “are deliberately throwing the civil action to the defendants.”

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 Judges' official actions, findings, and orders entered in the case, including any perceived delay 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 allegations that the Subject Judges are biased or prejudiced against him, are “throwing” the case to the defendants, or that they have 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