

CONFIDENTIAL

JUL 05 2016

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

David J. Smith
Clerk

Judicial Complaint No. 11-16-90033

IN THE MATTER OF A COMPLAINT FILED BY _____

IN RE: The Complaint of _____ against _____, U.S. Magistrate 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
Magistrate 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”).

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 March 2016 Complainant filed a civil rights action
raising various claims against multiple defendants. He also filed a motion to recuse the
Subject Judge, stating that he had reviewed the Subject Judge’s biography and feared that
he would not be impartial in the case. The Subject Judge denied the motion to recuse,
finding that it asserted no sufficient basis warranting recusal.

Complainant then filed a “Notice of Filing Clarification,” which the Subject Judge
construed as a motion for reconsideration and denied. In April 2016 Complainant filed a
document in which he objected to the Subject Judge making decisions in the case and
requested a “tenured District Judge.” A district judge construed the filing as a motion to
assign the case to a district judge and denied it. In May 2016 the defendants filed a
motion to dismiss the complaint.

Complaint

In his Complaint of Judicial Misconduct or Disability, Complainant states that the
Subject Judge has unspecified “ex-parte” information and that his “long history of

untenured makes him a status-quo person, who would automatically want to dismiss [Complainant's] case before mediation." Complainant states that the Subject Judge "has a wrong perception (a disability) of the bad reality of how [a county] uses political pressure," and he alleges that there is corruption the county in which he resides. He also appears to allege that the Subject Judge violated the Code of Conduct for United States Judges.

Complainant requests that the Subject Judge be removed from the case, stating that he believes the Subject Judge: (1) will not be fair and impartial; (2) has "far-far too much ex-parte information, that he will use in making decisions or recommendations"; (3) "will simply get a District Judge to sign his decisions, and thus violate intent of law and rule"; (4) "can be indirectly intimidated because of where his family lives, and his long history of untenured which makes him status-quo type"; and (5) "is status-quo type and thus he would automatically want to dismiss my case."

Supplement

In his supplemental statement, Complainant states that it appears that the Subject Judge "is still making decisions and simply getting someone else to sign or use a signature stamp." He also states, "Any normal human being would hate me and be biased against me, after I filed the complaint. So I do not understand why he is still involved in my case." To his supplement, Complainant attached a portion of a motion to recuse filed in a different case.

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 and orders issued in the case, including his failure to recuse, 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 misconduct or suffered from a disability.

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. Lamer', is written over a horizontal line.

Chief Judge