

CONFIDENTIAL

**FILED
U.S. COURT OF APPEALS
ELEVENTH CIRCUIT**

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

JUL 05 2016

**David J. Smith
Clerk**

Judicial Complaint No. 11-16-90034

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 2016 Complainant filed a prisoner civil rights action against multiple counties and state court judges, alleging that he had been maliciously prosecuted and falsely imprisoned. Later that month, the Subject Judge dismissed the complaint without prejudice to Complainant pursuing relief in state court, determining that the court did not have jurisdiction over certain defendants and that the claims against the remaining defendants were meritless. Complainant filed a motion for reconsideration, which the Subject Judge denied.

Complaint

In his Complaint of Judicial Misconduct or Disability, Complainant alleges that the Subject Judge, “[w]ithout statute of law . . . refused to allow suit to proceed . . . where there was good ground for a suit of malicious prosecution” and the defendants were liable for damages. Complainant states that the Subject Judge “is ignoring violations of [his] civil rights.”

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.

All of Complainant allegations concern the substance of the Subject Judge’s findings and orders issued in the case, and the allegations are directly related to the merits of the Subject Judge’s decisions or procedural rulings.

The allegations of this Complaint are “directly related to the merits of a decision or procedural ruling,” JCDR 11(c)(1)(B). For that reason, pursuant to Chapter 16 of Title 28 U.S.C. § 352(b)(1)(A)(ii) and Rule 11(c)(1)(B) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings of the Judicial Conference of the United States, this Complaint is **DISMISSED**.



Chief Judge