

JUL 25 2016

David J. Smith
Clerk

CONFIDENTIAL

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

Judicial Complaint No. 11-16-90042

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 June 2015 Complainant filed a 28 U.S.C. § 2254 petition for writ of habeas corpus in which he named a state court judge and a sheriff as respondents and challenged a contempt order issued in a state court action in which he was a defendant. He requested that the district court stay the state court proceeding, quash a writ of bodily attachment, and order that he be released from custody. A magistrate judge issued an order directing Complainant to file an amended petition, noting that it did not appear that he was “in custody” when the case was filed, it was unclear which order of contempt he was challenging, and his grounds for relief were either not cognizable on federal habeas review or were insufficiently stated.

Complainant then filed an “Emergency Motion for Relief,” requesting that the court order his release from jail, and the magistrate judge ordered that a ruling on the motion was deferred. In late October 2015 Complainant filed a “Notice of Interference with Communication to the Courts” and a Motion for Summary Judgment. In January 2016 the magistrate judge issued an order directing Complainant to show cause why the case should not be dismissed due to his failure to comply with the court’s order directing him to file an amended petition.

After that, Complainant filed a notice in which he discussed various matters relating to the pending state court action, requested that the court retain jurisdiction over the matter, and sought an order preventing the state court judge and the state from

incarcerating Complainant or his wife, _____. On April 21, 2016, the Subject Judge issued an order dismissing the case without prejudice due to Complainant's failure to comply with the court's order directing him to file an amended petition. In a footnote, the Subject Judge noted that even if the case were not dismissed for that reason, Complainant was not entitled to the relief he sought because, among other things, the court declined to interfere with ongoing state court proceedings.

Complaint

In his Complaint of Judicial Misconduct or Disability, Complainant states that on the same day the Subject Judge dismissed the federal case, the respondent judge issued in the state court action an order to show cause why _____ "should not be incarcerated for contempt of court in retaliation for filing the federal lawsuit." Complainant contends that this leaves "the layman reasonable cause to believe that [the Subject Judge] had communications with" the state court judge "on April 21, 2016 and had used his position in the United States District Court to intervene in the cause of action before it to protect the interest of the State Judges so charged under the federal cause of action." He states, "Such action while appealable in the federal cause of action does not negate the violation and deprivation of the constitutional rights of the individuals by performing favors for [a state] and State Judges."

To his Complaint, Complainant attached the Subject Judge's April 2016 dismissal order. He also attached an April 21, 2016 order issued in a state court case by the respondent judge finding that _____ was without legal reason or excuse for failing to appear at a March 2016 hearing, and ordering her to show cause why the court should not find her in contempt of court.

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 order dismissing 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 that Complainant challenges, he provides no credible facts or evidence in support of his claims that the Subject Judge communicated with a state court judge during the case, intervened in a state court action, acted to protect the interest of state court judges, 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**.



Chief Judge