

**FOR THE JUDICIAL COUNCIL
OF THE ELEVENTH CIRCUIT**

111690055

**IN RE: COMPLAINT OF JUDICIAL
MISCONDUCT OR DISABILITY**

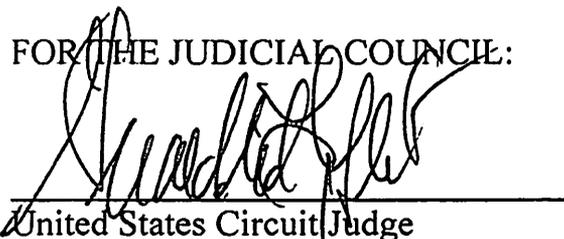
ON PETITION FOR REVIEW*

Before: TJOFLAT, HULL, MARCUS, WILSON, WILLIAM PRYOR, MARTIN, JORDAN, ROSENBAUM, and JULIE CARNES, Circuit Judges; MOORE, MERRYDAY, THRASH, BOWDRE, LAND, STEELE, WATKINS, and WOOD, Chief District Judges.

Upon consideration of the petitioner's complaint by a review panel consisting of Judges Tjoflat, Wilson, Pryor, Thrash, and Land, the order of Chief Judge Ed Carnes filed on 25 August 2016, and of the petition for review filed by the complainant on 14 September 2016, with no non-disqualified judge on the Judicial Council Review Panel having requested that this matter be placed on the agenda of a meeting of the Judicial Council,

The Judicial Council Review Panel hereby determines that the disposition of this matter was proper and said disposition is hereby **AFFIRMED**.

The foregoing actions are **APPROVED**.

FOR THE JUDICIAL COUNCIL:

United States Circuit Judge

* Chief Circuit Judge Ed Carnes and Chief District Judge Rodgers did not take part in the review of this petition.

CONFIDENTIAL

AUG 25 2016

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

David J. Smith
Clerk

Judicial Complaint No. 11-16-90055

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”).

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 2014 Complainant filed in the United States District Court for the _____ District of _____ a lawsuit against a state court judge and other defendants, alleging in part that the state court judge abused his authority, discriminated against Complainant, and violated the Americans with Disabilities Act (ADA) in denying Complainant benefits in his divorce proceedings. After various proceedings, in January 2015 a district judge entered an order transferring the case to the United States District Court for the _____ District of _____.

After that, the Subject Judge entered an order dismissing certain defendants from the action and directing Complainant to file an amended complaint. In early February 2015 Complainant filed an amended complaint alleging, among other things, that the state court judge violated his constitutional rights by denying him a mental competency evaluation, retaliated against him for attempting to exercise his rights under the ADA, and engaged in a criminal scheme to deny him benefits. The defendants filed motions to dismiss the amended complaint and a motion to stay discovery, and Complainant filed multiple motions seeking various types of relief, including a motion for leave to file a second amended complaint.

In June 2015 the Subject Judge granted the motion to stay discovery, providing that discovery was stayed until further notice from the court. In September 2015 the Subject Judge entered an order granting Complainant's motion to file a second amended complaint, denying various motions as moot, and extending the stay of discovery. Later that month, Complainant filed a second amended complaint in which he again raised various allegations against the state court judge in connection with Complainant's divorce proceedings. Certain defendants filed motions to dismiss the second amended complaint. Complainant then filed multiple motions seeking various types of relief, including a motion for a default judgment against two defendants, a motion for leave to amend his complaint, and a motion to lift the stay on discovery. In June 2016 Complainant filed a motion to recuse the Subject Judge, arguing that she was disqualified under "28 U.S.C. Section 455(a)(b)(1)."

Complaint

In his Complaint of Judicial Misconduct or Disability, Complainant alleges that the Subject Judge engaged in misconduct, undermined public confidence in the integrity and impartiality of the judiciary, and created a strong appearance of impropriety when she failed to "take action to correct [t]he wrongful action" of the state court judge whom Complainant had named as a defendant in his lawsuit. Complainant contends that the Subject Judge "ignored" the state court judge's "unauthorized" and "illegal" actions, allowed him to commit crimes and to discriminate against Complainant, and acted to protect him. Complainant asserts that the Subject Judge has failed to perform her judicial functions and that her "actions are a fraud directed at the judicial machinery."

Complainant alleges that the Subject Judge is biased against him because he filed a complaint against a state court judge, asserted his rights under the ADA, is representing himself, has a mental disability, and is a man, and that the Subject Judge is biased in favor of the defendant judge. He asserts that the Subject Judge is not treating him the same as other litigants who have civil actions pending in her court. Complainant then asserts that the Subject Judge delayed the case, ignored his motions, and failed to schedule a hearing despite stating that she would do so. He alleges that the Subject Judge is denying him access to the court and refused to allow discovery to proceed because of Complainant's race, gender, and disability. Complainant states that he feels that the Subject Judge's rulings requiring him to refile his complaint on multiple occasions were "simply a ploy to avoid her judicial duties." Finally, Complainant alleges that the Subject Judge violated multiple canons of the Code of Conduct for United States Judges, and he raises allegations against judges other than the Subject Judge. He attached various documents to his Complaint.

Supplement

After he filed his Complaint, Complainant filed a supplemental statement. In the supplement, Complainant generally complains that he has not been able to get an expedited hearing in the case. Complainant attached to his supplement, among other things, an “Affidavit of Probable Cause” in which he reiterates his allegations and complains of delay in the case. He also contends that the Subject Judge is acting with an illicit and improper motive, has “unclean hands,” denied him due process, and is biased against him because of his pro se status, race, gender, age, and disability. Complainant states that he believes the Subject Judge “is engaging in obstruction and trying to cover up” the state court judge’s “abusive ruling.”

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:

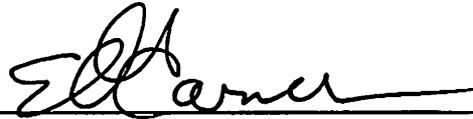
Rule 3(h)(3)(A) tracks the Act, 28 U.S.C. § 352(b)(1)(A)(ii), in excluding from the definition of misconduct allegations “[d]irectly related to the merits of a decision or procedural ruling.” This exclusion preserves the independence of judges in the exercise of judicial power by ensuring that the complaint 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 Judge’s 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 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 allegations that the Subject Judge acted with an illicit or improper motive, engaged in

any fraud, is biased against Complainant or in favor of a defendant judge, discriminated against Complainant, acted to protect a defendant judge, 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