

FOR THE JUDICIAL COUNCIL
OF THE ELEVENTH CIRCUIT

111690075

IN RE: COMPLAINT OF JUDICIAL
MISCONDUCT OR DISABILITY

ON PETITION FOR REVIEW*

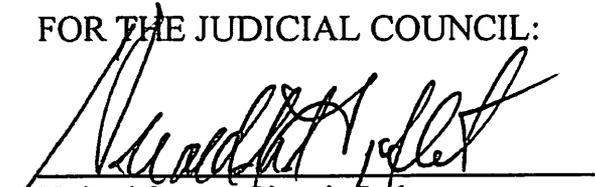
Before: TJOFLAT, HULL, MARCUS, WILSON, WILLIAM PRYOR, MARTIN, JORDAN, ROSENBAUM, and JULIE CARNES, Circuit Judges; MOORE, MERRYDAY, THRASH, BOWDRE, LAND, STEELE, WATKINS, and WOOD, Chief District Judges.

Upon consideration of the petitioner’s complaint by a review panel consisting of Judges Tjoflat, Wilson, Pryor, Land, and Wood, 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.

AUG 25 2016

David J. Smith
Clerk

CONFIDENTIAL

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

Judicial Complaint No. 11-16-90075

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 October 2014 a plaintiff filed an amended class action complaint against _____, generally alleging that the defendant had injured customers in connection with its marketing and sale of insurance. After various proceedings, in October 2015 the plaintiffs filed a “Motion for Preliminary Approval of Class Settlement and for Certification of Settlement Class,” asking the court to grant preliminary approval of a settlement agreement resolving all claims against the defendant. Later that month, the Subject Judge granted preliminary approval of the settlement and certified the settlement class. After that, the plaintiffs filed a “Motion for Final Approval of Settlement” and a “Motion for Attorneys’ Fees, Expenses, and Incentive Award.”

On February 24, 2016, Complainant filed objections to the settlement, alleging that _____ had engaged in criminal conduct and taking issue with the amount _____ was to pay under the settlement, and he included a “Customer Transaction Journal” from _____. After a hearing on February 29, 2016, the Subject Judge entered an order noting that the parties would provide additional evidence of costs incurred by the plaintiffs’ class counsel and would file a proposed order based on the court’s rulings at the final settlement approval hearing. In early March 2016 the Subject Judge entered an order granting the plaintiffs’ request for reimbursement of fees and expenses. A couple of days later, Complainant filed a “Motion to Stay Class Action Agreement . . .” in which he argued that the Subject Judge had violated his due process

rights by finding that his objections were untimely and noting that the Subject Judge had him “physically put out” of the courthouse.

On March 7, 2016, the Subject Judge entered an “Order on Non-Party’s Motion to Stay” denying Complainant’s motion, finding that his arguments were “incoherent and meritless.” The Subject Judge noted that she considered Complainant’s objection to the settlement agreement at the February 29, 2016 hearing, “even though his objection was filed over a month after the deadline for class members to object to the settlement.” The Subject Judge stated that at the hearing, she found that: (1) Complainant’s objection was untimely; (2) he was not a member of the class at issue because he did not purchase insurance from _____; and (3) the case addressed issues “entirely unrelated” to his issues with the _____. Two days later, the Subject Judge entered an order granting final approval of the class action settlement. In the order, the Subject Judge overruled Complainant’s objection to the settlement, stating, “In addition to being untimely filed and not having standing to object because he is not a class member, . . . [Complainant’s] objection fails to articulate any understanding of this lawsuit and the settlement.” The next day, the Subject Judge entered an administrative order closing the case.

After that, Complainant filed a motion for an order to show cause as to why he had not been paid from the settlement and a motion to set aside court orders in which he generally took issue with the settlement agreement and contended that the Subject Judge had engaged in misconduct. In mid-April 2016 the Subject Judge denied Complainant’s motions, finding that they were “incoherent” and had “no basis in fact or law.” In June 2016 Complainant filed four motions generally seeking relief from the Subject Judge’s orders, arguing that she violated his due process rights, and noting that she caused him to be physically removed from the courtroom. The Subject Judge denied those motions as “incoherent and frivolous.”

Complaint

In his Complaint of Judicial Misconduct or Disability, Complainant states that his Complaint “is to show the extent that [the Subject Judge] has gone to discredit [him] and to abuse her power as a Public officer of the Courts.” Complainant takes issue with the Subject Judge’s findings at the February 29, 2016 hearing that his objections were untimely and that he was not a member of the class, and he states that the Subject Judge had two United States Marshals escort him out of the courtroom. Complainant states that the Subject Judge “gravely erred” in finding that he had not purchased insurance from _____ because he attached to his objections his Customer Transaction Journal “which clearly proved [his] case.”

Complainant states that the Subject Judge construed his “Rule 33 Motion into some other motion that [he] did not file,” he takes issue with the Subject Judge’s order on attorney’s fees, expenses, and an award to the lead plaintiff, and he notes that other

motions he filed were “denied as incorrect and frivolous.” Complainant states, “To say that [the Subject Judge] committed Judicial Misconduct is a gross understatement which should constitute her disqualification or recusal from the case.” He also states that he believes the Subject Judge should be impeached and that attorneys in the case should be disbarred. He attached various documents to his Complaint.

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, findings, rulings, and orders entered 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 that Complainant challenges, he provides no credible facts or evidence in support of his allegations that the Subject Judge abused her power 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