

FILED
U.S. COURT OF APPEALS
ELEVENTH CIRCUIT

JUL 02 2018

David J. Smith
Clerk

CONFIDENTIAL

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

Judicial Complaint No. 11-18-90025

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 permitted. See 11th Cir. JCDR 6.7.

Background

The record shows that in October 2017 Complainant filed a complaint that was docketed as filed pursuant to 42 U.S.C. § 1983. In December 2017 the Subject Judge entered an order directing Complainant to refile his complaint on a standard § 1983 form and to pay the filing fee or submit a proper motion to proceed in forma pauperis. The Subject Judge also provided instructions as to what should be included in the refiled complaint.

In February 2018 the Subject Judge ordered Complainant to show cause why his case should not be dismissed for failure to comply with the court’s previous order. The next month, Complainant filed an amended complaint in which he argued in part that the Subject Judge acted in the absence of jurisdiction. In April 2018 a district judge entered an order dismissing the case without prejudice due to Complainant’s failure to comply with the court’s instructions and orders and failure to diligently prosecute his claims.

Complaint

In his Complaint of Judicial Misconduct or Disability, Complainant appears to allege that the Subject Judge acted without jurisdiction in the case and committed crimes, and Complainant cites various statutory provisions. He also appears to take issue with the Subject Judge's order stating that the case was a § 1983 action. He attached documents to his Complaint.

Supplement

In his supplemental statement, Complainant appears to contend that the Subject Judge lacked jurisdiction to issue the order to show cause and that his orders were void.

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 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 claims that the Subject Judge committed crimes 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**.

A handwritten signature in black ink, appearing to read "E. J. Stamer", written in a cursive style.

Chief Judge