

FILED
U.S. COURT OF APPEALS
ELEVENTH CIRCUIT

SEP 14 2018

David J. Smith
Clerk

CONFIDENTIAL

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

Judicial Complaint No. 11-18-90078

IN THE MATTER OF A COMPLAINT FILED BY _____

IN RE: The Complaint of _____ against _____, U.S. Circuit Judge for the U.S. Court of Appeals for the _____ Circuit, 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 Circuit 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 December 2015 Complainant filed a pro se amended complaint against three defendants, generally alleging that the defendants had violated his constitutional rights during a state court criminal trial in which he was a defendant. In January 2016 a magistrate judge issued a report recommending, among other things, that the amended complaint be dismissed for failure to state a claim. The next month, a district judge issued an order adopting the report and recommendation and dismissing the amended complaint for failure to state a claim. Complainant filed a notice of appeal.

In his appeal Complainant filed, among other things, a motion for a default judgment, a supplement to the motion, and an amended motion for a default judgment. In May 2017 a panel of this Court that included the Subject Judge affirmed the dismissal of Complainant’s amended complaint, holding that despite a liberal construction of his pleadings, he had not alleged sufficient facts to state a claim against any of the defendants. The panel also denied Complainant’s motion for a default judgment.

Complaint

In his Complaint of Judicial Misconduct or Disability, Complainant notes that in his amended motion for a default judgment, he advised the circuit court of a “parallel citation” stating that a document filed by a pro se litigant is to be liberally construed. He then states:

With this citation being primary good law, it would be physically impossible for a pro se who is disabled to be not able to state his claim to inform the [circuit court] of the unlawful accusations which I undergone [sic] during the process of proving my innocence beyond reasonable doubt by jury in trial.

Complainant requests “a review . . . for correction of this default error.”

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’s allegations concern the substance of the decision in his appeal. 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