

CONFIDENTIAL

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

Judicial Complaint No. 11-15-90081

**FILED
U.S. COURT OF APPEALS
ELEVENTH CIRCUIT**

AUG 20 2015

**DOUGLAS J. MINCHER
CLERK**

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 July 2014 the United States filed a complaint against Complainant and others, seeking declaratory relief, injunctive relief, penalties, and damages arising from the defendants’ alleged filing of bogus liens and other documents against federal officials. Complainant filed an answer in which he sought dismissal of the complaint. In October 2014 the Subject Judge construed Complainant’s answer as a motion to dismiss and denied it. In December 2014 Complainant filed an amended answer, generally arguing that there was no case or controversy before the court. Meanwhile, defaults were entered against the other defendants.

In April 2015 the plaintiff moved for entry of a Case Management and Scheduling Order, noting that Complainant had failed to respond to its efforts to complete a bilateral Case Management Report. On April 14, 2015, the Subject Judge granted the motion and entered a Case Management and Scheduling Order setting out various deadlines. After that, Complainant filed a “Motion for Disqualification,” arguing that the Subject Judge had exhibited bias and prejudice against Complainant and in favor of the plaintiff by issuing a Case Management and Scheduling Order even though Complainant’s amended answer showed that there was no case or controversy before the court. The Subject Judge denied the Motion for Disqualification, finding that Complainant had not established that the Subject Judge was biased or prejudiced against him. Complainant then filed a “Motion to Alter or Amend Judgment,” which the Subject Judge denied.

Complaint

In his Complaint of Judicial Misconduct or Disability, Complainant alleges that the Subject Judge engaged in misconduct and was unable to discharge the duties of his office due to a mental or physical disability when he entered the April 14, 2015 Case Management and Scheduling Order, which did not pertain to a “live controversy.” Complainant asserts that the court lacked subject matter jurisdiction over the claim seeking declaratory relief. He complains that the Subject Judge violated various Canons of the Code of Conduct for United States Judges. Finally, Complainant suggests that his allegations are supported by the Motion for Disqualification that he filed in the case.

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 findings 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 that Subject Judge engaged in misconduct or suffered from a disability.

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