

FEB 01 2017

David J. Smith
Clerk

CONFIDENTIAL

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

Judicial Complaint No. 11-16-90108

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 Complainant filed a civil action against a company and a motion to proceed in forma pauperis (IFP). The next month, the Subject Judge entered an order denying the IFP motion and dismissing the case without prejudice for failure to exhaust administrative remedies and failure to state a claim on which relief could be granted. After that, Complainant filed a “Motion to Resubmit with Amendments” and a motion for summary judgment.

In January 2015 the Subject Judge denied those motions, determining that Complainant’s Motion to Resubmit did not constitute an amended complaint that stated a claim on which relief could be granted. Complainant filed a notice of appeal, and this Court clerically dismissed the appeal for want of prosecution. In July 2016 Complainant filed in the district court a motion “to proceed as instructed by Article 3 of The U.S. Constitution” and for a refund. The Subject Judge denied the motion, concluding that the court did not have the authority to reopen the matter or to refund the appeal fee.

Complaint

In his Complaint of Judicial Misconduct or Disability, Complainant alleges that the Subject Judge “failed to follow the law, the US Constitution, Article 3 Section 2.3,” which provides that the “Trial of all Crimes . . . shall be by Jury.” Complainant states, “I never saw the inside of a courtroom with a jury.”

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 Subject Judge’s official actions, findings, and orders entered in the case, and they 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