

JAN 26 2017

David J. Smith
Clerk

CONFIDENTIAL

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

Judicial Complaint No. 11-16-90109

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 August 2015 Complainant filed in a _____ district court a petition for writ of habeas corpus seeking various types of relief. A district judge later entered an order severing Complainant’s claim for habeas corpus relief under 28 U.S.C. § 2241 and transferring the matter to the United States District Court for the _____ District of _____. In February 2016 a magistrate judge issued a report recommending that the action be dismissed, generally finding that Complainant did not show he was entitled to relief under § 2241.

In March 2016 the Subject Judge adopted the report and recommendation and dismissed the action. Complainant then filed objections to the report and recommendation, which the Subject Judge overruled. Complainant also filed a notice of appeal and an application to appeal in forma pauperis (IFP). In June 2016 the Subject Judge denied the application to appeal IFP, stating that the court could discern no non-frivolous issue for appeal and finding that an appeal would not be taken in good faith. Complainant then filed a motion for a court order and a motion for reconsideration, and the Subject Judge denied those motions. This Court clerically dismissed Complainant’s appeal for want of prosecution.

Complaint

In his Complaint of Judicial Misconduct or Disability, Complainant alleges that the Subject Judge violated her oath of office by denying “a Sovereign Secured Party, Natural Man, his Right to Redress of Grievance, and access to the Courts, due to his poverty,” and by stating that his affidavit was filed in bad faith.

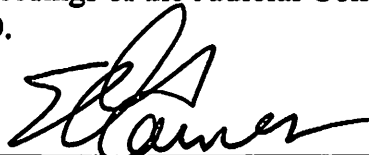
Discussion

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, 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 violated her oath of office 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