

FILED
U.S. COURT OF APPEALS
ELEVENTH CIRCUIT

APR 11 2017

David J. Smith
Clerk

CONFIDENTIAL

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

Judicial Complaint No. 11-16-90131

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”).

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 Complainant filed in state court a civil rights action against
multiple defendants, generally alleging that his First Amendments rights had been
violated, and in June 2016 the defendants removed the case to federal court. After that,
Complainant filed multiple motions seeking various types of relief, including a motion
for partial summary judgment. In July 2016 the defendants also filed a motion for
summary judgment. The next month, Complainant filed, among other things, an
emergency motion to compel discovery, which the Subject Judge denied without
prejudice. Later that month, the Subject Judge entered an order granting the defendants’
motion for summary judgment, generally finding that Complainant did not establish he
was entitled to relief. Complainant filed a motion to reopen the case, which the Subject
Judge denied.

The record shows that in August 2016 Complainant filed with this Court a petition
that was docketed as a petition for writ of mandamus in which he generally sought review
of the district court’s order granting summary judgment in favor of the defendants. He
then tendered a “Consent Form,” which this Court returned to him because the “three
strikes’ provision of the Prison Litigation Reform Act of 1995” was applicable to him. In

October 2016 this Court clerically dismissed the petition for want of prosecution because Complainant failed to pay the filing and docketing fees.

The record also shows that in November 2016 Complainant filed in the district court a 28 U.S.C. § 2254 petition for a writ of habeas corpus challenging certain state court convictions. Complainant later filed a motion to stay the proceedings pending a ruling in a state court case, and the Subject Judge granted the motion in January 2017. After that, Complainant filed multiple motions seeking various types of relief, which the Subject Judge denied without prejudice.

Complaint

In his Complaint of Judicial Misconduct or Disability, Complainant alleges that the Subject Judge engaged in misconduct and unethical behavior by granting summary judgment, when various discovery requests had not been ruled upon. Complainant alleges that on “direct appeal,” the Subject Judge conspired with a deputy clerk to “thwart the panel ruling.” Complainant contends that the deputy clerk removed a pleading from the file without a judicial determination and made a “judicial decision” to apply the “three-strikes” provision. Finally, Complainant asserts that the Subject Judge and others “agreed” to these actions “to prohibit redress and deny access to the court,” which constituted a “criminal violation.” He attached documents to his Complaint.

Supplement

In Complainant’s supplemental statement, he moves for an order directing the Subject Judge to recuse herself from his habeas corpus case, stating that he fears he will not receive a fair hearing and that “[c]ollusion is possible.”¹

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

¹ Complainant’s motion is DENIED.

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, rulings, and orders entered in the cases, 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 was part of a conspiracy 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