

CONFIDENTIAL

APR 11 2017

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

David J. Smith
Clerk

Judicial Complaint No. 11-16-90134

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 2015 Complainant filed a lawsuit against _____ and other defendants, raising, among other things, claims that the defendants violated the Racketeer Influenced and Corrupt Organizations Act. A few days later, the Subject Judge entered an order finding that the complaint was a “shotgun pleading” and directing Complainant to file an amended complaint. Complainant filed an amended complaint. In December 2015 he filed a motion for default judgment against _____, which the Subject Judge denied because he did not establish that he properly served _____.

Later that month, Complainant filed a second motion for default judgment against _____. The Subject Judge construed the motion as one for clerk’s entry of default and granted it, and a Clerk’s Default was entered against _____. In January 2016 _____ filed an emergency motion to vacate the order and Clerk’s Default, arguing that service was ineffective because the individual served was not an employee of _____. _____ later filed a motion to dismiss the amended complaint. In mid-January 2016 the Subject Judge found good cause to set aside the default, vacated its order granting the motion for entry of default, set aside the Clerk’s Default, and denied the motion for default judgment as moot.

Later that month, the Subject Judge dismissed the case without prejudice as to _____ due to Complainant’s failure to oppose its motion to dismiss. The day before,

Complainant had filed a motion for additional time to respond to _____ motion to dismiss, but the motion was not docketed until after the court's order. The Subject Judge then granted Complainant's motion for additional time and vacated the order dismissing the case as to _____.

In early March 2016 Complainant filed a second amended complaint against _____ and others. The Subject Judge then denied _____ and another party's motions to dismiss as moot in light of the filing of the second amended complaint. In late March 2016 Complainant filed a motion for clerk's entry of default as to _____. The next day, a deputy clerk issued a "Non-Entry of Default" as to _____, stating that _____ was no longer a party to the case. The next month, Complainant filed a motion for entry of a default judgment against _____. Also in April 2016, another defendant filed a motion to dismiss the amended complaint. On May 4, 2016, the Subject Judge granted that motion because Complainant failed to oppose it, and stated that the defendant was terminated from the case.

After that, Complainant filed a motion to recuse the Subject Judge, generally arguing that she had exhibited bias against him and in favor of the defendants. Complainant also argued that the deputy clerk who entered a certificate of no default against _____ informed him that the Subject Judge "told her not to enter a default against the primary defendant under any circumstance, regardless of the record of the case and despite what the docket said," and that the "instructions the judge gave the clerk provided the ultimate favoritism for the defendant." On May 19, 2016, the Subject Judge entered an order denying the motion to recuse, stating that she did not direct anyone to not enter default against _____ and generally finding that recusal was not warranted. The Subject Judge also vacated the clerk's non-entry of default as erroneously entered, and directed the clerk to enter default against _____ for failure to respond to the second amended complaint.

_____ filed a motion to vacate the order directing the clerk to enter default, stating its counsel mistakenly relied on the "confusing and inconsistent record" to conclude that it was not required to respond to the second amended complaint. _____ also filed a motion to dismiss the second amended complaint. A few days later, _____ filed an amended motion to vacate. In July 2016 the Subject Judge issued an order directing the parties to show cause why the case should not be stayed pending the resolution of a criminal case that had been filed against Complainant.

In October 2016 the Subject Judge entered an order that, among other things, granted _____ amended motion to vacate and granted _____ motion to dismiss the second amended complaint due to Complainant's failure to oppose it. Complainant filed a notice of appeal, and the Subject Judge entered an order administratively closing the case in light of the appeal. In January 2017 this Court dismissed the appeal for lack of jurisdiction. In February 2017 the Subject Judge dismissed the second amended

complaint as to the remaining defendants for lack of service, denied all pending motions as moot, and closed the case.

Complaint

In his Complaint of Judicial Misconduct or Disability, Complainant alleges that the Subject Judge: (1) used her office to obtain special treatment for friends and relatives; (2) had improper discussions with parties or counsel for one side; (3) treated litigants or attorneys in a demonstrably egregious and hostile manner; and (4) engaged in conduct outside the performance of her official duties that had a prejudicial effect on the administration of the business of the courts, “including the widespread lowering of public confidence in the courts among reasonable people.” Complainant asserts that the Subject Judge conspired with the defendants and a deputy clerk “to exclude or to completely excuse the primary defendant in the case by extra-judicially terminating that defendant as a party” without a court order and without “any official or recorded action whatsoever.” Complainant states the Subject Judge “further conspired with the defendants” by issuing orders, “abstaining from issuing other orders,” and “applying differing standards,” which helped the defendants evade liability in the case.

Complainant then states that the Subject Judge’s order requiring him to file an amended complaint was “too stern as issued against a pro se Plaintiff,” and that her ruling denying his first motion for default “was stern but technically correct.” He states: “In light of events since it is possible [the Subject Judge] focused on the same error _____ had forced the process server to change illegally out of court because of a pre-agreement between [the Subject Judge] and _____ in the case before.” He states that he was able to show that the affidavit of service had been legally compliant and that the Subject Judge “sort of” granted his second motion for default. Complainant takes issue with the Subject Judge’s January 29, 2016 order granting _____ “unsigned and unserved motion to dismiss by default,” stating that she vacated the order “after it became apparent that [she] had not checked with the clerk on the due date”

Complainant takes issue with a deputy clerk’s denial of his request for issuance of a default as to _____ on the ground that _____ had been terminated as a party. He states that the deputy clerk told him that she had “spoken with the judge presiding over the case who had told her to deny [his] request and that under no circumstance was she going to disobey and enter default against a defendant the judge had told her not to.” Complainant states that he alerted the court of “the issue” by motion and letter, but the court had not responded and _____ “has since been freed from the case extra-judicially.” Finally, Complainant states that on May 4, 2016, the Subject Judge granted the unsigned and unserved motion to dismiss filed by another defendant “with yet more brazen violations of procedure than before,” and he asserts her statement that the defendant be terminated by the clerk was “wholly unnecessary.”

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, rulings, 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 was biased against Complainant or in favor of the defendants, used her office to obtain special treatment for friends and relatives, had improper discussions with parties or counsel for one side, treated litigants or attorneys in a demonstrably egregious and hostile manner, 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