

CONFIDENTIAL

FILED
U.S. COURT OF APPEALS
ELEVENTH CIRCUIT

APR 04 2018

David J. Smith
Clerk

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

Judicial Complaint Nos. 11-17-90055 and 11-17-90056

IN THE MATTER OF A COMPLAINT FILED BY _____

IN RE: The Complaint of _____ against U.S. Magistrate Judge _____
and U.S. District Judge _____ of 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 Magistrate Judge _____ and United States District Judge _____ (collectively, “the Subject Judges”), 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 January 2017 Complainant filed a *pro se* civil rights action against multiple defendants, and he paid the filing fee. Later that month, he filed a “Motion to Enforce the Duties of the Clerk” in which he, among other things: (1) stated he had been advised that his complaint would be screened before the issuance of summons; (2) argued that such screening was improper because he was a non-prisoner who had paid the filing fee; and (3) contended that the local rules authorizing the screening of his complaint were unconstitutional.

In August 2017 Judge _____ issued a report recommending that Complainant’s claims against one defendant be dismissed with prejudice. Judge _____ also issued an order granting Complainant’s Motion to Enforce to the extent that: (1) the clerk was directed to send Complainant a summons form for the remaining defendants; (2) Complainant was directed complete the summonses and return them within 21 days; and (3) the clerk was directed to then issue the summonses. After that, Judge _____ entered an order adopting Judge _____ report and recommendation and dismissed the claims against one defendant.

Complaint

In his Complaint of Judicial Misconduct or Disability, Complainant alleges that the Subject Judges violated Canon 2A of the Code of Conduct for United States Judges, which provides, “A judge should respect and comply with the law and should act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.” He specifically alleges that the Subject Judges violated Canon 2A “by ‘stonewalling’ or unreasonably delaying the service of [his] civil rights complaint and by illegally screening the same,” in violation of Fed. R. Civ. P. 4(b) and 28 U.S.C. § 1915A(c). Complainant states that he has “a good faith belief” that the Subject Judges are intentionally violating the law pertaining to service of process. He also complains about the delay in authorizing the issuance of summons and in ruling on his Motion to Enforce.

Complainant alleges that the Subject Judges violated the law by screening his complaint under Prison Litigation Reform Act (PLRA). He asserts that the PLRA does not apply to him because he is not a prisoner and he paid the filing fee. He also alleges that the Subject Judges violated Rule 4 by relying on local rules that preclude the issuance of summons for non-lawyers until a complaint is screened. He contends that such local rules, as well as local rules requiring a complaint to be filed on a certain form, are unconstitutional. Complainant states that he is being deprived of the equal protection of the law because he is being treated differently than similarly situated attorneys who pay the filing fees. He requests that “appropriate action” be taken and that his case be transferred to a “neutral district court.” He attached documents to his Complaint.

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.

In addition, Rule 3(h)(3)(B) provides that cognizable misconduct does not include “an allegation about delay in rendering a decision or ruling, unless the allegation concerns an improper motive in delaying a particular decision or habitual delay in a significant number of unrelated cases.” The “Commentary on Rule 3” provides that “a complaint of delay in a single case is excluded as merits-related. Such an allegation may be said to challenge the correctness of an official action of the judge—in other words, assigning a low priority to deciding the particular case.”

To the extent Complainant’s allegations concern the substance of the Subject Judges’ official actions, findings, report, and orders, the allegations are directly related to the merits of the Subject Judges’ decisions or procedural rulings. His allegations about any perceived delay in the case are also merits-related. Apart from the decisions or procedural rulings with which Complainant takes issue, he provides no credible facts or evidence in support of his claims that the Subject Judges violated the Code of Conduct for United States Judges, violated the law, 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**.

A handwritten signature in black ink, appearing to read "E. Lamm", is written over a horizontal line.

Chief Judge