

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 No. 11-17-90079

IN THE MATTER OF A COMPLAINT FILED BY _____

IN RE: The Complaint of _____ against _____, U.S. Magistrate 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
Magistrate 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 two
supplemental statements. The filing of the supplemental statements is permitted. See
11th Cir. JCDR 6.7.

Background

The record shows that in March 2017 Complainant filed a 28 U.S.C. § 2254
petition for writ of habeas corpus challenging certain state court convictions. The Subject
Judge then issued an order directing the respondent to file a response by June 12, 2017.
On June 12, 2017, the respondent filed a motion seeking a 60-day extension of time in
which to file its response, and the Subject Judge granted the motion, finding the
respondent had shown good cause for the extension. Complainant filed an objection to
the respondent’s request for an extension of time, a motion for a default judgment, and an
objection to the Subject Judge’s order, all of which the Subject Judge denied.

In July 2017 Complainant filed a “Complaint” against the Subject Judge in which
he stated that it appeared the Subject Judge had engaged in ex parte communications and
was biased against Complainant. The Subject Judge construed the document as a motion
to recuse and denied it, generally finding that Complainant did not establish a basis for
his recusal. In August 2017 the respondent filed a second motion for a 60-day extension
of time to file its response, and on August 14, 2017, the Subject Judge granted the

motion, finding that the respondent had shown good cause for an extension. Complainant then filed an objection to the request for an extension, which the Subject Judge denied.

In October 2017 the respondent filed a third motion requesting an additional 30 days to file its response, and the Subject Judge granted the motion. Complainant filed an objection to the motion for extension, which the Subject Judge denied. In November 2017 the respondent filed a motion to dismiss Complainant's § 2254 petition as procedurally defaulted, and the next month, Complainant filed a response in opposition.

Complaint

In his Complaint of Judicial Misconduct or Disability, Complainant alleges that the Subject Judge "did willfully and wantonly join" with the respondent's counsel to deprive Complainant of "his right to due process of law, without justification or hearing." He also alleges that on June 13, 2017, the Subject Judge engaged in ex parte communications with the respondent's counsel "regarding such matters of an extension of time," which "substantially affected [Complainant's] right to Liberty and deprived him the office of Habeas Corpus, and right to have his continued detention promptly determined by a competent authority." He alleges that the Subject Judge violated a local rule and "goes on the repeat the previous, and then acted to prevent . . . [Complainant] from discovering this malfeasance." Complainant attached documents to his Complaint.

Supplements

In Complainant's first supplemental statement, he states that he is providing documents supporting his contention that the Subject Judge engaged in ex parte communications in connection with his order granting the respondent's second motion for an extension of time. Complainant also asserts that the Subject Judge "concealed" his August 14, 2017 order until August 28, 2017. He attached a portion of his institution's incoming mail log to his supplement.

In his second supplement, Complainant alleges that the Subject Judge violated the "Codes of Judicial Conduct" and violated Complainant's constitutional rights by "granting ex parte respondent's third request" for an extension of time. He attached documents to the second supplement.

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 allegations that the Subject Judge engaged in improper ex parte communications, violated the Code of Conduct for United States Judges, 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