

CONFIDENTIAL

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

Judicial Complaint No. 11-17-90081

FILED
U.S. COURT OF APPEALS
ELEVENTH CIRCUIT

APR 04 2018

David J. Smith
Clerk

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 two
supplemental statements. The filing of the supplemental statements is permitted. See
11th Cir. JCDR 6.7.

Background

The record shows that in January 2017 Complainant filed a lawsuit alleging,
among other things, that the defendants violated the Americans with Disabilities Act and
that one of the defendants violated the _____ Business Organizations Code. The
defendants later filed a motion to dismiss the case, and in May 2017 the Subject Judge
entered an order granting that motion because the complaint failed to state a claim on
which relief could be granted. Complainant filed a motion for reconsideration, which the
Subject Judge denied. Complainant appealed, and in January 2018 this Court affirmed
the district court’s judgment.

Complaint

In his Complaint of Judicial Misconduct or Disability, Complainant alleges that
the Subject Judge “committed perjury by violation of the oath of office pursuant to” 28
U.S.C. § 453 “Oaths of justices and judges.” He also states that the Subject Judge “failed
to enforce” certain sections of the _____ Business Organizations Code and
provisions of the Americans with Disabilities Act.

Supplements

In Complainant's first supplemental statement, he reiterates his allegations, and he attached documents to the supplement. Complainant's second supplement consists of a document entitled "'Fraud On The Court By An Officer Of The Court' And 'Disqualification Of Judges, State and Federal.'"

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 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 committed perjury, 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