

APR 17 2018

David J. Smith
Clerk

CONFIDENTIAL

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

Judicial Complaint No. 11-17-90086

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 her Complaint, she filed three
supplemental statements. The filing of the supplemental statements is permitted. See
11th Cir. JCDR 6.7.

Background

The record shows that in June 2017 Complainant filed in state court a lawsuit
against her employer, and the next month, the defendant removed the case to federal
court. In August 2017 the defendant filed a motion to dismiss the case for lack of
jurisdiction. Complainant filed, among other things, motions to remand the case to state
court. In October 2017 the Subject Judge entered an order granting the defendant’s
motion to dismiss, finding that the court lacked subject matter jurisdiction over the case,
and denying Complainant’s motions. After that, Complainant filed multiple motions,
including a motion for reconsideration.

The record also shows that in October 2017 Complainant filed in state court a
lawsuit against various defendants, and the defendants removed the case to federal court
the next month. The Subject Judge was assigned to the case. Complainant filed multiple
motions seeking various types of relief, including a motion to recuse the Subject Judge in
which she appeared to argue that the Subject Judge improperly accepted the notice of
removal and improperly dismissed her previous case.

Complaint

In her Complaint of Judicial Misconduct or Disability, Complainant alleges that the Subject Judge “delayed the Case over two months before” entering an order dismissing her first case, and she later appears to allege that he delayed the case in an effort to benefit the defendants. She alleges that the Subject Judge “entered his own argument” to dismiss the case because the defendants had not offered any argument, and she appears to contend that the case should have been remanded instead of dismissed.

Complainant states that the Subject Judge “has contaminated the Case File” and “destroy[ed] [her] chances for Judg[ment].” She states that the Subject Judge’s dismissal order shows that he “used his power of authority to detain, sustain, remain, compromise, attack, and dismiss” her case. She alleges that the Subject Judge violated various provisions of the state “Judicial Code of Conduct Rules.” She requests that the Subject Judge be removed from her cases and a default judgment be entered in her favor in the district court, and she attached various documents to her Complaint.

Supplements

In her first supplemental statement, Complainant generally reiterates her allegations, and she attached documents to the supplement. In the second, Complainant alleges that the Subject Judge “reassigned himself” as the district judge in her second case and “contaminated” that case, and she attached documents to the supplement. Complainant submitted various case-related documents as her third 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, rulings, and orders in Complainant's 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, she provides no credible facts or evidence in support of her claims that the Subject Judge acted with an improper motive 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. H. [unclear]", written over a horizontal line.

Chief Judge