

APR 17 2018

David J. Smith
Clerk

CONFIDENTIAL

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

Judicial Complaint No. 11-17-90090

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 February 2017 Complainant filed a lawsuit against a
company and a motion for leave to proceed in forma pauperis (IFP). Complainant also
filed two motions for permission to file documents electronically, noting that he was
located in a different country. In April 2017 Complainant and two other plaintiffs filed a
pro se amended complaint against multiple defendants. Complainant then filed, among
other things, a “Motion for Service of Process on Foreign State Defendants” seeking to
have the defendants served. In August 2017 the plaintiffs filed a motion for clarification,
asking why the court had not effectuated service of process on the defendants “for half a
year.”

On September 6, 2017, the Subject Judge issued an order dismissing the amended
complaint without prejudice and denying the IFP motion. The order stated that the
amended complaint failed to state a claim on which relief could be granted and appeared
to be frivolous because venue was not proper in the district and the court appeared not to
have personal jurisdiction over any of the defendants. The order gave the plaintiffs until
September 29, 2017 to file a second amended complaint. In mid-October 2017 the
Subject Judge issued an order dismissing the case without prejudice, noting that the
plaintiffs failed to submit an amended complaint by September 29, 2017. The plaintiffs
appealed and moved for leave to proceed IFP on appeal. In November 2017 the Subject
Judge denied the motions to appeal IFP, finding that the appeal was frivolous. In March
2018 this Court clerically dismissed the appeal for want of prosecution.

Complaint

In his Complaint of Judicial Misconduct or Disability, Complainant states that the Subject Judge dismissed the case without providing notice to the plaintiffs, without providing them an opportunity to respond, and while being aware that they had never received any communications from the court. Complainant states that the district court requires pro se litigants to send and receive documents by mail, which “results in lengthy delays, unfair proceedings where parties represented by attorneys receive immediate notice and more time to respond to rulings, and is especially problematic for litigants that reside overseas.” He contends that the “inability of the Court to mail documents to the plaintiffs, and to provide adequate time to respond, has resulted in [the Subject Judge] wrongfully dismissing” the case. Complainant states that the plaintiffs “notified the Court numerous times, and even filed Motions with the Court addressing these deficiencies,” but the “Court took no action to remedy the situation whatsoever.”

Complainant takes issue with the Subject Judge’s September 9, 2017 order, stating that it did not address “outstanding issues,” including the “Court’s inability to properly communicate with the plaintiffs,” as well as their motion for clarification. Complainant also contends that the order did not give them enough time to respond, as the Subject Judge was aware that they were overseas. Complainant states that the Subject Judge’s “conduct raises questions regarding impropriety, and also prejudices, and impedes the plaintiff[s]’ ability to have fair proceedings, and a fair trial.”

Complainant asserts that the Subject Judge was aware that court documents were being returned due to insufficient postage, but took no action to remedy the issue and instead dismissed the case. Complainant states that the plaintiffs believe the Subject Judge “dismissed the case to have it removed from her calendar, because she doesn’t want to hear a Pro Se case,” and “to frustrate the plaintiffs into giving up on seeking a legal remedy from the court.” He states that the Subject Judge “has knowingly wasted the plaintiff[s]’ time, and financial resources, and continues to do so.” He also states that the plaintiffs “have no faith whatsoever in the District Court handling” case-related documents.

Complainant lists what he alleges are “examples of judicial ethical violations that are the basis of the plaintiff’s complaint”: (1) failure to uphold the integrity and independence of the judiciary; (2) failure to dispose of judicial matters promptly, efficient, and fairly; (3) failure to diligently discharge administrative responsibilities without bias; and (4) engaging in conduct prejudicial to the administration of justice. Finally, Complainant requests that the case be reopened, that the plaintiffs be given “a proper amount of time” to respond to the Subject Judge’s rulings, and that the Subject Judge be removed from the case.

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 with which Complainant takes issue, he provides no credible facts or evidence in support of his allegations that the Subject Judge 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