

CONFIDENTIAL

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

Judicial Complaint No. 11-15-90064

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 March 2015 Complainant filed an amended complaint against her former employer raising claims under two state statutes. In early April 2015 she filed a motion for a default judgment against the defendant. On April 2, 2015, the Subject Judge denied the motion for a default judgment, finding there was no indication that the amended complaint had been served on the defendant. On the same day, the defendant moved to dismiss the amended complaint for lack of subject matter jurisdiction. Complainant filed a response in which she argued that the defendant’s attorney filed the motion to dismiss “without a certificate of service for Notice of Appearance . . . to harass, cause unnecessary delay, or needlessly increase the cost of litigation,” and that the attorney violated a state bar rule of professional conduct by failing to comply with a discovery request.

Complainant then filed a motion for relief from the Subject Judge’s April 2 order denying the motion for a default judgment. On April 21, 2015, the Subject Judge denied the motion, finding that there were no grounds for default because the defendant had responded to the amended complaint by filing a motion to dismiss. After that, Complainant moved to vacate the Subject Judge’s April 21 order, arguing, among other things, that the defendant’s counsel failed to file a notice of appearance “to certify representations to the court,” including but not limited to perjury, and that “officers of this court[]” denied her motion for a default judgment “to harass, cause unnecessary delay, or needlessly increase the cost of litigation against” her.

FILED
U.S. COURT OF APPEALS
ELEVENTH CIRCUIT

AUG 10 2015

DOUGLAS J. MINCHER
CLERK

On April 28, 2015, the Subject Judge denied the motion to vacate, finding that there were no grounds for default or sanctions because the defendant timely responded to the amended complaint. Complainant moved to vacate that order, and the Subject Judge denied the motion. In May 2015 the Subject Judge granted in part the defendant's motion to dismiss, finding that Complainant had failed to sufficiently allege subject matter jurisdiction and giving her 14 days to file an amended complaint. The Subject Judge also noted that it was "unclear how [Complainant] contends opposing counsel violated" the state bar rule of professional conduct.

Complaint

In her Complaint of Judicial Misconduct or Disability, Complainant contends that the Subject Judge's orders "ignored" that the defendant's attorney engaged in "improper service and misrepresentation to the court regarding service" for the purpose of harassing, causing unnecessary delay, or needlessly increasing the cost of litigation. Complainant states that "it is plausible" that the Subject Judge violated her rights. She also asserts that the Subject Judge "has engaged in misconduct that abuses discretion sua sponte to comply with the integrity required to end the prevalence of pe[r]jury and report it to the proper authorities for an investigation." She attached various documents to her Complaint.

Discussion

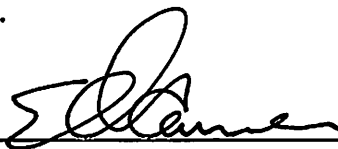
Rule 3(h)(3)(A) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings of the Judicial Conference of the United States provides that cognizable misconduct does not include "an allegation that is directly related to the merits of a decision or procedural ruling." The Rule provides that "[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.

To the extent Complainant's allegations concern the substance of the Subject Judge's 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, she provides no credible facts or evidence in support of her 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